TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 112.

THE CENTRAL COLORADO IMPROVEMENT COMPANY, PLAINTIFF IN ERROR,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF COLORADO.

FILED SEPTEMBER 10, 1875.

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1 In the supreme court of the Territory of Colorado.

Pleas before the judges of the supreme court of the Territory of Colorado, at the city of Denver, in the county of Arapahoe, at the February term of said court, held in said city on the second Tuesday of February, one thousand eight hundred and seventy-five.

Witness, the honorable Moses Hallett, chief-justice of said court.

JNO. W. WEBSTER, *Clerk.*

2 THE CENTRAL COLORADO IMPROVEMENT Company, plaintiff in error,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the county of Pueblo, defendant in error.
} Error to supreme court, Colorado Territory.

3 TERRITORY OF COLORADO,
County of Pueblo, ss:

Pleas before the honorable James B. Belford, associate-justice of the supreme court of Colorado Territory, and judge presiding of the December term, A. D. 1874, of the district court of the third judicial district of said Territory, within and for the county Pueblo, begun and held at the court-house, in the city of Pueblo, in said Pueblo County, on Tuesday, the eighth day of December, anno Domini one thousand eight hundred and seventy four.

Present, Hon. James B. Belford, associate justice of the supreme court of Colorado Territory and judge presiding; John W. Henry, esq., district attorney of the third judicial district of said Territory; Geo. A. Bute, clerk of said court; Abe R. Ellis, sheriff of Pueblo County, in said Territory.

Be it remembered, that heretofore, to wit, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and
4 seventy-four, the Central Colorado Improvement Company, by its attorney, Henry C. Thatcher, filed in the office of the clerk of said court its declaration in a plea of trespass on the case upon promises, which is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
Pueblo County, ss:

In the district court of the third judicial district of the Territory of Colorado, sitting in and for said county, of the December term thereof, A. D. 1874, the Central Colorado Improvement Company, a corporation created and existing under the laws of the Territory of Colorado, plaintiff in this suit, by Henry C. Thatcher, its attorney, complains of The Board of County Commissioners of the County of Pueblo, in the Territory of Colorado, defendant in this suit, who have been summoned to answer the plaintiff of a plea of trespass on the case on promises.

For that, whereas the said defendant heretofore, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and seventy-four, at Pueblo, to wit, in said county of Pueblo, became and still is indebted to the said plaintiff in the sum of four thousand
5 dollars of lawful money of the United States of America, for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the defendant, and at the special instance and request of the said defendant, and being so indebted to the said plaintiff the said defendant, in consideration thereof, afterwards, to wit

on the same day and year, and at the same place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, at the place aforesaid, in consideration that the said plaintiff had, before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise, of the said plaintiff; the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the
6 said plaintiff so much money as the last aforesaid mentioned goods, wares, and merchandise, at the time of sale and delivery thereof, were reasonably worth, when the said defendant should be thereunto afterwards requested; and the said plaintiff avers that the said goods, wares, and merchandise, last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further sum of four thousand dollars, of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, had notice.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, to wit, in said Pueblo County, became, and still is, indebted to the said plaintiff in the further sum of four thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the like request of the said defendant; and in the like sum for other money by the said plaintiff, before that time,
7 paid, laid out, and expended for the said defendant, and at the request of the said defendant; and in the like sum for other money by the said defendant, before that time, had and received to and for the use of said plaintiff; and in the like sum for other money, before that time and then due and owing from said defendant to said plaintiff; and in the like sum for the price and value of work then done and material for the same provided by the plaintiff for the defendant, and at the like special request of the defendant; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with
8 the said plaintiff, and then and there being in arrear and unpaid, and, upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of four thousand dollars, of the like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiff, and the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) hath not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto altogether refused,

and still doth refuse, to the damage of the said plaintiff of five
9 thousand dollars; and therefore the said plaintiff brings suit, &c.

HENRY C. THATCHER,
Plaintiff's Attorney.

And afterwards, to wit, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and seventy-four, the defendant appeared by Allen A. Bradford, its attorney, and filed a plea in words and figures following, to wit:

TERRITORY OF COLORADO,
County of Pueblo, ss:

In the district of the third judicial district of Colorado Territory, in and for Pueblo County, to December term, A. D. 1874.

BOARD OF COUNTY COMMISSIONERS OF PUEBLO,
ats.
THE CENTRAL COLORADO IMPROVEMENT COMPANY. } In assumpsit.

And the defendant, by Allen A. Bradford, its attorney, comes and defends the wrong and injury when, &c., and says it did not undertake or promise in manner and form as the plaintiff has in his declaration thereof complained against it, and of this its puts itself upon the country, etc.

By ALLEN A. BRADFORD,
Its Att'y.

10 And the plaintiff doth the like.

By HENRY C. THATCHER,
Att'y for Plaintiff.

And afterwards, and on the fourteenth day of December, in the year of our Lord one thousand eight hundred and seventy-four, the said day being one of the days of the said December term, A. D. 1874, of said court, the following among other proceedings were had and done and entered of record, to wit:

THE CENTRAL COLORADO IMPROVEMENT COMPANY,
vs.
BOARD OF COUNTY COMMISSIONERS OF PUEBLO County. } Assumpsit.

Agreed E

This day came the plaintiff, by H. C. Thatcher, its attorney, and the defendant, by Allen A. Bradford, its attorney, also came, and the said parties submit themselves herein to the consideration and judgment of the court upon the agreed statement of facts herein filed, without the intervention of a jury, the said parties expressly waiving the right to submit the issues herein to a jury

11 After hearing the arguments of counsel, and all and singular the premises being seen and fully understood, the court finds the issue for the plaintiff, and assesses the plaintiff's damages at two thousand seven hundred and forty-eight dollars. And it is, thereupon, considered

by the court that the said plaintiff do have and recover of and from the said defendant the said sum of two thousand seven hundred and forty-eight dollars, so as aforesaid by the court aforesaid assessed for its damages, and also its costs and charges by it about its suit in this behalf expended, to be taxed, and that execution issue therefor.

And thereupon the said defendant prays an appeal from the judgment aforesaid to the supreme court of the Territory of Colorado, which is granted by the court; and it is ordered by the court, that the said defendant, within thirty days from this date, file with the clerk of this court his bill of exceptions, and his appeal-bond in the sum of
12 three thousand five hundred dollars, to be approved by said clerk.

And afterwards, to wit, on the seventh day of January, in the year of our Lord one thousand eight hundred and seventy-five, the defendant, by his attorney, filed in said clerk's office a certain bond approved, which is in the words and figures following, to wit:

Know all men by these presents that we, The Board of County Commissioners of the County of Pueblo and Territory of Colorado, as principal, and N. W. Duke, as surety, are held and firmly bound to the Central Colorado Improvement Company in the penal sum of three thousand five hundred dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our successors, our heirs, executors, and administrators, jointly and severally, by these presents, duly attested by the seal of said county, and the seal of said surety, this 6 day of January, A. D. 1875.

13 The condition of the above obligation is such, that whereas the said Central Colorado Improvement Company did, on the 14th day of December, A. D. 1874, in the district court of Pueblo County, and of the December term thereof, A. D. 1874, recover judgment against the above-bounden Board of County Commissioners of Pueblo County for the sum of two thousand seven hundred and forty-eight dollars, besides costs of suit; from which said judgment of said district court of Pueblo County the said Board of County Commissioners have prayed for and obtained an appeal to the supreme court of said Territory:

Now, therefore, if the said Board of County Commissioners shall duly prosecute said appeal with effect, and moreover pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against said Board of County Commissioners in case said judgment shall be affirmed in the said supreme court, then this obligation to be void, otherwise to remain in full force and virtue.

14 Witness the seal of said county hereunto affixed by and in pursuance of an order of the county commissioners thereof, for that purpose duly passed and recorded on the 22d day of December, A. D. 1874.

PUEBLO COUNTY SEAL. 1866. COLORADO.

GEO. W. HEPBURN,
Chairman of Board of County Commissioners.

Attest:

SAM. M'BRIDE.

[SEAL.]

N. W. DUKE,
County Clerk.

TERRITORY OF COLORADO,
County of Pueblo, ss:

At an adjourned meeting of the Board of County Commissioners for said Pueblo County held at the court-house in Pueblo on the twenty-second day of December, A. D. 1874, there were present George W. Hepburn, chairman, Samuel S. Seare, commissioner, Benjamin B. Field, do., Allen A. Bradford, county attorney, Sam'l McBride, clerk; when the following proceedings, among others, were had and done, to wit:

Whereas The Central Colorado Improvement Company, an incorporated body, did on the fourteenth (14th) day of December, A. D. 1874, recover a judgment in the district court of Pueblo County in a suit then and there pending against the Board of County Commissioners for Pueblo County for the sum of twenty-seven hundred and forty-eight dollars, ($2,748,) and the said Board of County Commissioners then and there prayed an appeal to the supreme court of said Territory, and which said appeal having been duly allowed, and the judge of said court having fixed the amount of the appeal-bond in the penal sum of three thousand five hundred dollars, ($3,500;) now, therefore, be it

Resolved by the Board of County Commissioners of said county, that the county attorney be, and is hereby, required to prepare an appeal-bond for the purpose of appealing the said cause to the said supreme court, and the said bond be signed by the chairman of this board, and attested by the county clerk under the seal of said county, in witness of its obligation as principal, and also certify upon said bond, under the seal of the county, this resolution:

TERRITORY OF COLORADO,
County of Pueblo, ss:

I, Sam. McBride, county clerk in and for said county, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners of Pueblo County now in office.

I' witness whereof I have hereunto set my hand and affixed the seal of said county, at Pueblo, this sixth day of January, A. D. 1875.

PUEBLO COUNTY SEAL. 1866. COLORADO.

SAM. McBRIDE,
County Clerk.

Taken and approved this 7th day of January, 1875.

GEORGE A. BUTE, *Clerk.*

And afterwards, to wit, on the 12th day of January, A. D. 1875, there was filed a certain bill of exceptions, which is in words and figures following, to wit:

TERRITORY OF COLORADO,
Pueblo County, ss:

In the district court of the third judicial district of Colorado Territory, sitting in and for the county of Pueblo, of December term, A. D. 1874.

THE CENTRAL COLORADO IMPROVEMENT Company,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Pueblo County.
} Bill of exceptions.

Be it remembered, that on the 9th day of December, A. D. 1874, the same being one of the days of said term of said court, the said plaint-

iff, by its attorney, H. C. Thatcher, esq., comes into court, and the said defendant, by its attorney, Allen A. Bradford, also comes, and the said plaintiff thereupon filed an agreed statement of the facts in said cause, which was all the evidence introduced therein, and which said agreed statement are in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Pueblo, ss:

In the district court of the third judicial district of the Territory of Colorado, sitting within and for the county of Pueblo, of the December term, A. D. 1874.

THE CENTRAL COLORADO IMPROVEMENT COMPANY,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF PUEBLO COUNTY. } Assumpsit.

Agreed case in the above-entitled suit:

18 It is hereby stipulated and agreed by and between the said plaintiff and the said defendant, by their respective attorneys, that said suit may be, and hereby is, submitted to the finding and judgment of said court, without the intervention of a jury, upon the following statement of facts:

On the first day of December, in the year of our Lord one thousand eight hundred and forty-three, Governor Manual Armijo, being then civil and military governor of Mexico, granted to one Gervacio Nolan the following described and bounded tract of land, to wit: Beginning at a point one and a half leagues below the mouth of the river of S't Charles, on the Arkansas River, at a monument No. 1, on the south bank of said river; thence following the said south bank of the river Arkansas upwards to a point five leagues above the junction of the S't Charles with the Arkansas River, where is placed the second monument; thence running half-way up the brow of the mountain

19 where is placed the third monument; thence following the same brow of the mountain to a point opposite the first monument, where is placed the fourth monument; thence to the place of beginning, containing, by estimate, about five hundred thousand acres of land, which said tract of land, at the time the same was granted, was lying and situate in the province of New Mexico, but is now situate, lying, and being in the County of Pueblo and Territory of Colorado.

On and prior to the first day of May, in the year of our Lord one thousand eight hundred and seventy-three, The Central Colorado Improvement Company was seized and possessed of all the right, title, and interest, if any, in and to the tract of land above described, which were by the making of the grant as aforesaid vested in Gervacio Nolan, the original grantee.

On the first day of July, in the year of our Lord one thousand eight hundred and seventy, the Congress of the United States of America, by an act entitled "An act to confirm the title of the heirs of Gervacio Nolan, deceased, to certain lands in the Territory of Colorado,"

20 approved July 1st, A. D. 1870, upon express conditions confirmed to a limited extent the said grant, to wit, to the extent of eleven square leagues, being forty-eight thousand eight hundred and twenty-five acres. Under and pursuant to the provisions of said act of July 1st, A. D. 1870, the plaintiff after receiving notice of the completion of

the survey of the lands within the exterior boundaries of said grant, did, as required by said act, select and locate in a compact form and did furnish the surveyor general of Colorado Territory with a plat and description of said selection and location on the twenty-seventh day of April, A. D. 1872, subject to the revision of the Commissioner of the General Land-Office and the Secretary of the Interior.

On the twenty-second day of May, A. D. 1872, the Hon. Willis Drummond, then Commissioner of the General Land-Office, caused the register and receiver of the Land-Office at Pueblo to "give notice to the pre-emption and homestead settlers on the lands within the se-
21 lected limits of the Nolan grant to come forward and prove their right to said tracts within three months from the date of the publication thereof." Pursuant to said notice pre-emption and homestead claimants, located within said preliminary selection of eleven leagues, did offer to prove, and did prove, their right to enter, and did enter, six thousand five hundred and sixty-five $\frac{42}{100}$ acres at the land-office at Pueblo, in the Territory of Colorado; that said entries so made as aforesaid under the pre-emption and homestead acts and pursuant to said act of July 1, A. D. 1870, were subsequently approved by the said Commissioner of the General Land-Office and by the honorable Secretary of the Interior. The register and receiver of the land-office at Pueblo were by letter bearing date December third, A. D. 1873, officially informed by said Commissioner that, by the records of his office, it appeared that there had been awarded to pre-emption and homestead settlers within "said eleven leagues selected" land amounting in the aggregate to six thousand five hundred and sixty-five $\frac{42}{100}$ acres, and that for that amount the grant-claimants were entitled to indemnity as pro-
22 vided in the second section of said act of July 1, A. D. 1870, said letter as written as aforesaid was in words and figures following:

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND-OFFICE,
"*Washington, D. C., Dec. 3d*, 1873.

Register and receiver Pueblo, Colorado:

GENTLEMEN: May 22d, 1872, this office directed you to give published notice to the pre-emption and homestead settlers on lands within the selected limits of the Nolan grant to come forward and prove their rights to said tracts within three months from date of said notice. It is believed that all such claims have now been adjusted, and a list is herewith enclosed of the entries so made, as shown by the records of this office, amounting in the aggregate to 6,565$\frac{42}{100}$ acres; and for that amount the grant-claimants are entitled to indemnity, as provided for in the 2d sec., act of July 1st, 1870. (U. S. Statutes, vol. 16, p. 646.) Upon receipt of this list you will allow said claimants to make such selections as are provided for in the above act, making report in full
23 of the tracts so selected in a special letter, referring to this as "G" by date.

"Very respectfully,

"WILLIS DRUMMOND, *Com.*"

On the twenty-seventh day of April, A. D. 1872, on which day was filed, as hereinbefore set forth, a diagram and description-list of "said eleven-league selection," as aforesaid, it was impossible to state and set forth the exact area of lots and fractional subdivisions within said eleven-league selection bordering on the Arkansas River, on the

south side thereof, for the reason that no official survey of the south meanders of the Arkansas River, within the limits of the Nolan grant, had prior to that time been made. After the official survey of said meanders had been made, and the area of the lots and fractional subdivisions within "said eleven league selection" were thereby officially ascertained, and by the said surveyor-general designated on the proper township-plats, the plaintiff prepared and filed with the surveyor-general a descriptive list of all the lands within said eleven-league selection, showing the accurate acres of said lots and fractional sub-
24 divisions, and embracing the same land and no other than the identical tract embraced by the said diagram, filed as aforesaid, on the twenty-seventh day of April, A. D. 1872. The said descriptive list of lands embraced within said "eleven-league selection," and filed as aforesaid, is in words and figures following, to wit:

Descriptive-list of lands lying within the amended diagram of the eleven square leagues of land selected by the confirmees of the Nolan grant in Pueblo County, Colorado, as shown by a plat filed by said confirmees April 27, 1872, under the provisions of the act of confirmation of July 1st, A. D. 1870.

Township & range.	Subdivision.	Section.	Acres.	100ths.
T. 20 S., R. 63 west	Lot 1	31	30	75
	Lot 2 of S. E. ¼	"	64	85
	Lot 2 of S. W. ¼	"	69	80
	S. W. ¼ S. E. ¼, or lot 3	"	36	50
	Lots 1 & 2 N. E., S. W. ¼	32	101	85
	Lots 3 & 4 of S. E. ¼	"	128	.....
	S. ½ S. W. ¼ & N. W. ¼ S. W. ¼	"	120	"
T. 20 S., range 64	Lots 1 & 6	25	37	.....
	Lots 4 & 5 S. W. ¼	"	59	73
	Lots 2 & 3	"	84	30
25	Lot 2	36	5	.....
	In S. ½ south of river	"	47	20
	In sections 33 & 34	"	387	07
Town. 20 S., range 65 W.	Lot 1	26	3	20
	Fract'l in	27	5	90
	Lot 1 & 3	34	44	35
	Lot 2 N. W. ¼, S. W. ¼ N. W. ¼, S. ½ N. E. ¼	"	191	20
	S. ½	"	320	.....
	S. ½ & S. ½ N. W. ¼, & lot 1 N. E. ¼	35	551	10
	E. ½ of lot 2, supposed to contain	36	20	20
	Lots 3, 4, 5, & 6	"	98	92
	S. ½ S. W. ¼, W. ½ S. E. ¼, S. E. ¼ S. E. ¼	"	200	00
Town. 21 S., range 63 W.	Lots 1, 2, & 3	5	213	14
	S. ½ N. E. ¼ & N. ½ S. E. ¼	"	160	00
	S. W. ¼, & S. W. ¼ N. W. ¼	"	200	00
	Lot 4 & S. W. ¼ N. W. ¼	"	110	80
	Lots 4 & 5 & S. W. ¼ N. W. ¼	6	150	37
	Lots 1, 2, 3, 6, & 7, S. E. ¼ & S. ½ N. E. ¼ & E. ½ S. W. ¼	6	625	85
	N. E. ¼ & S. E. ¼ S. W. ¼	7	200	00
	N. W. ¼ & W. ½ S. W. ¼, & N. E. ¼ S. W. ¼	7	305	72
Town. 21 S., range 64 W.	N. W. ¼ & S. ½ N. E. ¼	1	254	24
	S. ½, see H. list	"	320	00
	N. ½ N. E. ¼ on lots 1 & 2	.....	140	52
	All of section	2	749	12
	N. W. ¼ & S. ½ N. E. ¼	3	296	97
	S. ½ & lots 1 & 2 of N. E. ¼	"	457	30

Descriptive list of lands, &c.—Continued.

Township & range.	Subdivision.	Section.	Acres.	100ths.
	Lot 1 & S. ½ N. E. ¼	4	147	86
26	S. ½ & S. E. ¼ N. W. ¼; see N list	4	360	00
	Lots 3 & 4 N. W. ¼, lot 2 N. E. ¼, & S. W. ¼ N. W. ¼	4	170	58
	Lot 2 & E. ½ S. E. ¼	5	149	50
	Lot 1 N. E. ¼ & lot 3 & 4 W. ½	5	207	62
	S. ½ lot 2, lot 6, & S. W. ¼ S. E. ¼	6	117	07
	Lot 3, 4, & 5, & N. ½ lot 2	6	157	04
	S. E. ¼ S. E. ¼, N. ½ S. E. ¼, & lot 1 N. E. ¼	6	156	18
Town. 21 S., range 64 W., continued.	All of sec. 7, 8, 9, 10, & 11	6	3,194	96
	All of sec. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, & 22	"	7,025	32
	N. ½ N. E. ¼, N. ½ N. W. ¼, S. W. ¼ N. W. ¼, & N. W. ¼ S. W. ¼	23	240	00
	N. ½ N. W. ¼ & S. W. ¼ N. W. ¼	27	120	00
	N. ½ & N. ½, & S. W. ¼ & S. W. ¼, N. W. ¼ S. E. ¼	28	480	00
	All of sec. 29, 30, & 31	"	1,894	80
	W. ½, & W. ½ N. E. ¼, & N. W. ¼ S. E. ¼	32	440	00
Town. 21 S., range 65 W..	All in lots 1, 2, 3, & 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36..	"	11,533	88
Town. 22 S., range	W. ½ N. W. ¼	5	80	26
27 64 W.	N. ½, & N. ½ S. W. ¼, & S. W. ¼ S. W. ¼, & N. W. ¼ S. E. ¼	6	466	84
	Lots 1 & 2 of N. W. ¼	7	74	76
Town. 22 S., range 65 W..	All in sect's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11	.....	7,007	39
	N. ½, & W. ½ S W. ¼, & N. E. ¼ S. W. ¼, & N. W. ¼ S. E. ¼	12	480	00
	W. ½ N. W. ¼	14	80	00
	W. ½ & N. E. ¼	15	480	00
	All in sect's 16, 17, 18, 19, & 20	.....	3,202	08
	W. ½ & N. E. ¼	21	480	00
	N. W. ¼ N. W. ¼	22	40	00
	N. W. ¼	29	160	00
	W. ½ & N. E. ¼	30	480	56
Town. 22 S., range 66 W..	All in sect's 1, 12, 13, 24, & 25, & N. ½ & N. ½ S. W. ¼	36	3,596	80
	Total acres	.....	49,741	43

It appearing from said descriptive list to the Commissioner of the General Land-Office that The Central Colorado Improvement Company, by reason of the surveyor-general's failure to meander the south bank of the Arkansas River, and to designate the areas of lots and fractional subdivisions lying within said grant on the south bank of the Arkansas River, had made a preliminary selection and location of
28 forty-nine thousand seven hundred and forty-one $\frac{43}{100}$ acres, being an excess of nine hundred and sixteen acres over and above eleven square leagues which had been conditionally confirmed by act of Congress aforesaid, he, the said Commissioner, on the ninth day of March, A. D. 1874, in the city of Washington, D. C., required The Central Colorado Improvement Company to so modify said selection that it should not contain more than eleven square leagues of land. Pursuant to said requirement The Central Colorado Improvement Company, claimants of said Nolan grant, by its attorneys, Britton & Gray and H. C.

Thacher, withdrew from the said eleven-league selection nine hundred and twenty acres. On the same day, to wit, March 9, A. D. 1874, the said withdrawal was filed with said Commissioner, and was in words and figures following, to wit:

[A. T. Britton, H. T. Gray, Britton & Gray, attorneys at law, procure title from the United States to agricultural, mineral, & grant lands, No. 624 F street.]

"WASHINGTON, D. C., *March* 9, 1874.

"Hon. WILLIS DRUMMOND,
29 "*Commissioner of General Land-Office:*

"SIR: It is now found that in making the original selection of eleven square leagues in satisfaction of the 'Nolan grant,' under the act of July 1st, 1870, an excess of $915\frac{95}{100}$ acres over the amount of eleven square leagues has been included in the selection. This error arose from the fact that at the time the selection was made, the meander line along the south bank of the Arkansas River had not been run, and it was therefore impossible to ascertain the exact area of the tract selected. In order to reduce the selection to the amount of eleven square leagues as near as may be, and in accordance with the views verbally by you expressed to-day, we hereby withdraw from the said eleven-league selection the following tracts, to wit: Section 1, township 22 south, 66 W., 640; N. W. $\frac{1}{4}$ sec. 12, T. 22 south, 66 W., 160; N. $\frac{1}{2}$ of S.W. $\frac{1}{4}$ 80; S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ 40—total, 920. With this reduction our selection will embrace an area of $48{,}821\frac{43}{100}$ acres, being $4\frac{57}{100}$ acres less than the area of eleven square leagues to which we are entitled. Please
30 advise us of your approval of this modification of our selection.

"Very respectfully, your ob't servants,

"BRITTON AND GRAY,
"H. C. THATCHER,
"*Attorneys for Nolan Grant.*"

By reason of said withdrawal the N. W. $\frac{1}{4}$ of sec. 12, T. 22 south, of range 66 west, the N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of section 12, and all of section one of the same township and range, aggregating nine hundred and twenty acres, constituted no part of said eleven-league selection. On the day last aforesaid, to wit, March 9, 1874, the said Commissioner consented to said withdrawal, thus modifying the original eleven-league selection. By reason of the award as aforesaid of six thousand five hundred and sixty-five $\frac{42}{100}$ acres of the land lying within the preliminary eleven-league selection, The Central Colorado Improvement Company, as the legal representative of Gervacio Nolan, deceased, was required by the said Commissioner to relinquish the number of acres last aforesaid to the Government of the United States.
31 The tracts of land within said eleven-league selection that the plaintiff was so required to relinquish to the Government, and which were awarded by competent authority to homestead and pre-emption settlers who had resided prior to July 1st, A. D. 1870, within the boundaries of the tract of eleven square leagues, selected as aforesaid by the confirmees, are described as follows, to wit:

List of tracts entered and claimed under the pre-emption and homestead acts within the eleven-league location of the Nolan grant and for the aggregate area of which the owners of said grant are now entitled to select indemnity within the boundaries of the original grant as provided in the second section act of July first, one thousand eight hundred seventy. (*U. S. Statutes, vol.* 16, *p.* 646.)

	Date.	Certificate or receipt.	Name.	Subdivision.	Sec.	T.	R.	Area, acres.	100's.	Remarks.
	July 27, '72	323	José Ignacio Lopez	S. ½ S. W. ¼ & N. W. ¼ and S. W. ¼ 32, & E. ½, or lot 2, of S. E. ¼	31	20 S.	63 W.	184	85	P. A., 1841.
	Oct. 5, '72	379	José Armijo	N. ½ N. W. ¼ of lots 3, 6, 21, 63, & lot 2 S. W. ¼	"	"	"	141	56	" " "
32	Feb. 13, '72	580	Fernando Gonzales	Lots 3 & 4 of S. E. ¼	32	"	"	129	----	" " "
	June 27, '72	324	Seraphine Garcia	Lot 4 & S. W. ¼ N. W. ¼ 5 & S. ½ N. E. ¼	6	21 "	"	190	80	" " "
	Sept. 21, '72	374	Henry White	N. ½ N. W. ¼ S. E. ¼ N. W. ¼ & N. E. ¼ S. W. ¼	7	"	"	166	54	" " "
	Jan. 29, '70	1174	Louis Wilmers	In S. E. ¼	34	20 "	64	----	----	Commuted homestead, 1279. P. A. 1841.
	April 9, '72	286	Theodore Buck	Lots 1 & 2 N. E. ¼ 3, 21, & so much of S. E. ¼ as lies S. of Arkansas River	"	"	"	137	30	Area here stated is N. E. 4, 21, 64.
					"	"	"	----	----	P. A., 1841.
	May 16, '67	682	John Hill	E. ½ N. E. ¼, (south of river)	33	"	"	56	82	Homestead entry.
	March 16, '69	897	J. W. Guettler	Lots one & two	35	"	"	59	70	" "
	Nov. 2, '72	221	Hy. Chevalier	Lots 4 & 5 S. W. ¼	"	"	"	84	30	" "
	Oct. 15, '72	35	A. A. Johnson	Lots 2 & 3	34	"	"	95	10	" "
	April 20, '72	29	Ferdinand Spilleche	Lots 3 & 4 & S. E. ¼ S. W. ¼	5	21 "	"	172	"	P. A., 1841.
	Dec. 30, '71	314	Geo. W. Morgan, adm. of J. G. Robinson.	Lots 3 & 4, south of Arkansas River						
	March 7, '70	1242	Jacob Wildebaor	Lots 3, 4, & 5 & N. ½ of lot 2	6	"	"	157	04	" " "
	Dec. 17, '71	309	Stephen M. Waggoner	S. E. ¼ S. E. ¼, N. ½ S. E. ¼ & lot 1 of N. E. ¼	"	"	"	156	18	" " "
	Dec. 30, '71	154	Philip Zoeller	W. ½ N. E. ¼ & E. ½ N. W. ¼	13	"	"	160	00	Homestead entry.
	Oct. 8, '72	----	A. B. Chase, adm. of estate of J. W. Anderson.	N. ½ N. E. ¼, S. W. ¼ N. E. ¼, & S. E. ¼ N. W. ¼	32	"	"	160	00	D. S. awarded to him.
					23	"	"	160	00	P. A., Oct., 1841.
33	Jan. 29, '72	220	Joseph Weinberg	S. E. ¼ N. E. ¼ 22, & S. W. ¼ N. W. ¼ & N ½ N. W. ¼	27	"	"	160	00	D. S., 724, awarded to Bryson.
	March 4, '72	----	J. M. Bryson	S. ½ S. W. ¼ 22, & N. ½ N. W. ¼						
					28	"	64	160	00	P. A., 1841.
	Feb'y 2, '72	226	John F. Dorsey	N. ½ N. E. ¼ & E. ½ N. W. ¼	5	" "	"	166	21	" " "
	Nov. 4, '72	395	Jesus Maria Gallegos	Lots 3 & 4 N. W. ¼ & lot 2 N. E. ¼ & lot 1 N. E. ¼	28	" "	"	160	00	" " "
	Jan'y 21, '73	563	John Reid	N. ½ S. W. ¼ 25, N. E. ¼ S. E. ¼ & S. E. ¼ N. E. ¼	4	21 "	64 "	40	----	Homestead entry.
	April 25, '73	----	José E. Albaldonado	S. W. ¼ N. W. ¼	6	22	" "	160	08	" "
	Sept. 5, '72	208	Enstly D. Edson	E. ½ N. W. ¼ N. E. ¼ S. W. ¼ & S. W. ¼ N. E. ¼	34	20	65	77	10	Commuted homestead, 954.
	April 28, '71	194	Titus C. Wetmore	Lots 1 & 2, 27, & lot 2 N. W. ¼	35	" "	" "	160	00	Commuted homestead, 1421.
	Jan. 27, '72	347	David Flinn	S. ½ N. E. ¼ 34, & S. ½ N. W. ¼	"	" "	" "	127	30	P. A., 1841.
	April 27, '71	51	James N. Carlisle	Lot 1 of N. E. ¼	1	21 "	" "	161	40	" " "
	Dec. 30, '71	159	Klaus Wildeboor	W. ¼ S. E. ¼ & S. E. ¼ S. E. ¼ 36, 20, & N. E. ¼ N. E. ¼	34	20 "	" "	40	00	
	July 30, '70	1412	J. C. Love	S. W. ¼ N. W. ¼						

List of tracts entered and claimed under the pre-emption and homestead acts—Continued.

	Date.	Certificate of Receipt.	Name.	Subdivision.	Sec.	T.	R.	Area, acres.	100's	Remarks.
	March 14, '72	251	T. S. Sease	S. E. ¼	11	22	" "	160	00	P. A., 1841.
	May 10, '72	297	José de la Cruz Montagu.	W. ½ N. E. ¼ & N. E. ¼ N. E. ¼, 12, & S. E. ¼ S. E. ¼	1	" "	" "	160	00	" " "
	March 2, '72	248	Tho's Suttles	S. E. ¼ S. E. ¼, 10, S. W. ¼ S. W. ¼, 11, & N. W. ¼ N. E. ¼	15	" "	" "	160	00	" " "
34	March 22, '72	407	Felipe Cisneros	S. ½ S. E. ¼ & S. ½ S. W. ¼	20	" "	" "	160	00	Commuted homestead, 177.
	Jan'y 4, '72	172	James Fairhurst	N. E. ¼ S. W. ¼ & N. ½ S. E. ¼, 20, & N. W. ¼ S. W. ¼	21	" "	" "	160	00	P. A., 1841.
	July 15, '72	333	John Root	S. ½ S. E. ¼, N. E. ¼ S. E. ¼, S. E. ¼ N. E. ¼	25	" "	66 "	160	00	" " "
	May 10, '73	698	Chas B. Randall	W. ½ N. E. ¼, S. E. ¼ N. W. ¼, & N. E. ¼ S. W. ¼	21	" "	65 "	160	00	" " "
	Aug. 18, '73	869	John A. C. Moore	S. ½ S. E. ¼, 19, N. ½ N. E. ¼	30	" "	" "	160	00	" " "
	March 17, '73	612	Irom Like	S. W. ¼	6	21	63 "	170	36	" " "
	Feb'y 4, '73	568	José Maria Archuleta	S. E. ¼	"	" "	" "	160	00	" " "
	Sept 3, '72	.....	Columbus C. Brysom	N. E. ¼ S. W. ¼ & W. ½ S. E. ¼	22	" "	64	120	00	D. S. awarded to Brysom.
	Aug. 5, '72	.....	Albert B. Chase	W. ½ N. W. ¼ S. E. ¼ N. W. ¼, & N. W. ¼ S. W. ¼	32	" "	" "	160	00	D. S. awarded to Chase.
	Aug. 14, '73	.....	Hy. W. Lavender	N. ½ S. W. ¼, S. W. ¼ S. W. ¼, & N. W. ¼ S. E. ¼	13	" "	" "	160	00	D. S. awarded to Lavender.
	Dec. 14, '72	.....	N. Gabriel	E. ½ N. E. ¼, 12, 21, 64, S. W. ¼ N. W. ¼, S. W. ¼ S. W. ¼	7	" "	63 "	172	86	D. S. awarded to Gabriel.
	Sept 23, '72	.....	Garcia Tofalla	S. ½ S. E. ¼, 36, 20, & N. ½ M. E. of lots 1 & 2	1	" "	64 "	187	72	D. S. awarded to Tofalla.
	Sept. 30, '72	.....	James C. McClure	S. W. ¼ S. W. ¼, 7, 21, 63, E. ½ S. E. ¼, & S. W. ¼ S. E. ¼	12	" "	" "	166	32	D. S. awarded to McClure.
35	Oct. 8, '72	.....	M. L. Blunt	N. ½ N. E. ¼ of lots 1, 2, 6, 21, S. W. ¼ & N. E. ¼, lot 3	31	20	63	180	22	
								6,380	77	
				Add for note 2				184	65	
								6,565	42	

The plaintiff on the 30 day of January, A. D. 1874, for the aggregate of areas of the claims so established under the pre-emption and homestead acts did select and locate a like quantity of public lands, not mineral, according to the lines of public survey and not exceeding 160 acres in one section, and being within the original exterior boundaries of said "Nolan grant;" that a descriptive list of said indemnity selections was duly filed with the surveyor-general of Colorado and the said Commissioner of the General Land-Office; that on the 31st day of March, A. D. 1874, the Commissioner of the General Land-Office instructed the surveyor-general of Colorado to prepare such a plat of the selection made by the claimants of the Nolan grant as is directed to be made by the 4th section of the act of July 1st, 1870. On the 31st day of March, A. D. 1874, and at divers other times applied to the surveyor-general of Colorado for an estimate of the costs of so much of the survey of the
36 "Nolan grant" as inured or might inure to the benefit of the plaintiff; that the plaintiff desired to pay and offered to pay the amount of such estimate; that the surveyor-general informed the plaintiff that until all selections, including both the preliminary eleven square league selection and the indemnity selections located in lieu of the aggregate area of land awarded as aforesaid to homestead and pre-emption settlers were formally accepted by the Commissioner of the General Land-Office, he, the said surveyor-general, could make no estimate of the costs of such survey; that the Government price for surveying lands lying on a river where a meandering line had to be run was higher than for the survey of complete legal subdivisions where no meandering was required; that until the acceptance and approval of the final selections made and to be made by the confirmees of the grant he could not determine the Government cost of the survey by reason of the different prices being fixed by the Government for different grades of work. By reason of the failure of the said surveyor-general prior to the first day of May,
37 A. D. 1874, to furnish an estimate of the cost of survey to the plaintiff, being the legal representative of the heirs of the said Gervacio Nolan, the plaintiff did not and could not pay before the day last named to the said surveyor-general or any other person the cost of so much of the surveys of the said Nolan grant as inured or might inure to the benefit of the heirs of the said Gervacio Nolan, whose legal representative the plaintiff is and has been ever since May first, A. D. 1873. Nor had the surveyor-general of Colorado prior to the first day of May, A. D. 1874, furnished properly-approved plats to the plaintiff (being the sole claimant under said act of July 1st, A. D. 1870) as evidence of title as required by the fourth section of said act of July 1st, 1870. Nor thence (May 1st, 1874) hitherto have the costs of so much of the surveys of said grant as inured or might inure to the benefit of the plaintiff been paid, nor have said properly-approved plats been furnished by the surveyor-general. The Board of County Commissioners of Pueblo County, at an adjourned meeting held on the 13th day of
38 September, A. D. 1873, at the court-house in the city of Pueblo, fixed the rate of taxation for the year (A. D. 1873) eighteen hundred seventy-three, by the following order:

"It is ordered that the following rate of taxes be and are hereby levied upon all the taxable property in said Pueblo County for the following purposes, to wit:

For county purposes, seven (7) mills on the dollar.
" school " two (2) " " " "
" road " one and a half " " " "
" territorial " one and a half " " " "
Poll tax, two dollars per poll."

Under and by virtue of said order of the said Board of County Commissioners the above rate of taxation was levied upon all the land embraced within said preliminary eleven-league selection and particularly described by subdivisions and lots hereinbefore, save and except the said six thousand five hundred and sixty-five $\frac{42}{100}$ acres awarded to settlers under the pre-emption and homestead acts, and hereinbefore particularly described and set forth. Said preliminary eleven-league
39 selection, as filed in the said surveyor-general's office prior to the meandering of the Arkansas River as aforesaid, is shown and represented by the plat thereof hereunto annexed and marked "1;" the land thereon designated by the red color is the land awarded as aforesaid to pre-emption and homestead settlers, and the land designated in light blue is the original eleven-league selection after taking therefrom the land awarded to said settlers.

[Here follows map marked page 39.]

40 The total assessed value of the land embraced within said preliminary eleven-league selection, exclusive of the land awarded as aforesaid to pre-emption and homestead settlers, and exclusive of the 920 acres withdrawn from said selection as aforesaid was for the year (A. D. 1873) eighteen hundred and seventy-three two hundred and eight thousand five hundred and thirty-nine ($208,539) dollars. The plaintiff on the first day of July, A. D. 1874, paid to N. W. Duke, treasurer of said Pueblo County, on account of taxes claimed to be due by said treasurer on said valuation for the year 1873, the sum of two thousand six hundred and twenty-eight $\frac{86}{100}$ dollars, of which said sum $1,459.75 were paid for county taxes; $417.07 were paid for school taxes, $312.80 for territorial tax; $148.15 for special road tax; $291.09 on account of interest claimed to have accrued from January 1st, A. D. 1874, to July 1st, A. D. 1874, on original total of taxes on the valuation aforesaid. When the plaintiff paid said treasurer said $2,628.86 he,
41 the said treasurer, gave his receipt to the plaintiff therefor, which receipt is in words and figures following:

JULY 1ST, 1874.—Received of The Central Colorado Improvement Company the sum of twenty-six hundred twenty eight $\frac{86}{100}$ dollars, in full for county, school, territorial, and road tax on the following property:

Acres.	Description.	Section.	Town.	Range.
102	N. E. ¼ S. W. ¼ & lots 1 & 2, S. of river	32	20	63
480	N. E. ¼ & N. ½ S. E. ¼ & S. W. ¼ & E. ½ N. W. ¼	5	21	63
280	S. ½ N. W. ¼ sect. 6, N. E. ¼ & S. E. ¼ S. W. ¼	7	21	63
550	S. ½ & N. W. fract. ¼ & S. ½ N. E. ¼	1	21	64
612	All of section 2 south of river	2	21	64
560	S. ½ & S. ½ N. E. ¼ & N. W. ¼	3	21	64
480	S. ½ & E. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & S. E. ¼ N. W. ¼	4	21	64
150	E. ½ S. E. ¼ & S. W. ¼ S. E. ¼ & fract. N. W. ¼ S. E. ¼	5	21	64
120	S. ½ S. W. ¼ & S. W. ¼ S. E. ¼	6	21	64
3,640	All of sect's 7, 8, 9, 10, 11, & W. ½ & W ½ N. E. ¼ & N. W. ¼ S. E. ¼	12	21	64
42 200	S. ½ S. E. ¼ & S. E. ¼ S. W. ¼ & W. ½ N. W. ¼	13	21	64
520	N. ½ & N. ½ S. E. ¼ & N. ¼ S. W. ¼ S. W. ¼	14	21	64
4,480	All of 15, 16, 17, 18, 19, 20, & 21	—	21	64
260	N. ½ N. W. ¼ & S. W. ¼ N. W. ¼ & N. W. ¼ S. W. ¼ & E. ½ S E. ¼	22	21	64

Acres.	Description.	Section.	Town.	Range.
120	N. W. ¼ S. W. ¼ & N. E. ¼ N. E. ¼ sec. 23 S. W. ¼ N. W. ¼	27	21	64
240	S. ½ N. E. ¼ & N. W. ¼ S. E. ¼ & S. W. ¼ S. W. ¼ & W. ½ N. W. ¼	28	21	64
440	S. E. ¼ S. E. ¼ & N. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. W. ¼ & N. ½ S. W. ¼ & S. W. ¼ S. W. ¼	29	21	64
1,240	All of sect. 30 & N. ½ & S. W. ¼ & N. ½ S. E. ¼ & S. W. ¼ S. E. ¼	31	21	64
200	W. ½ N. E. ¼ & E. ½ S. W. ¼ & N. W. ¼ S. E. ¼	32	21	64
80	In S. W. ¼	35	20	64
320	S. ½	34	20	65
320	In sect. outside town plat	1	21	65
10,880	All of sect. 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, & 36	—	21	65
240	W. ½ N. W. ¼ sect. 5, S. E. ¼ N. E. ¼ & N. W. ¼ S. E. ¼ sect. 6 & W. ½ N. W. ¼	7	22	64
43 600	N. ½ & S. W. ¼ & N. ½ S. E. ¼ & S. W. ¼ S. E. ¼	1	22	65
7,040	All of sect. 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, & 18	—	22	65
200	S. E. ¼ N. E. ¼ & N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ & N. ½ N. W. ¼	12	22	65
600	N. ½ & S. W. ¼ & N. ½ S. E. ¼ & S. W. ¼ S. E. ½	10	22	65
440	N. ½ & E. ½ S. W. ¼ & N. W. ¼ S. W. ¼	11	22	65
480	W. ½ N. W. ¼ sect. 14 & W. ½ & S. ½ N. E. ¼	15	22	65
280	E. ½ N. E. ¼ & N. ½ N. W. ¼ & S. W. ¼ N. W. ¼ & S. ½ S. W. ¼	21	22	65
360	N. ½ & N. W. ¼ S. W. ¼	20	22	65
720	N. ½ & S. W. ¼ & N. ½ S. E. ¼ sect. 19 & N. W. ¼	29	22	65
240	S. ½ N. E. ¼ & S. W. ¼	30	22	65
2,560	All of sect's 1, 12, 13, 24	—	22	66
480	W. ½ & N. ½ N. E. ¼ & S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼	25	22	66
400	N. ½ & N. ½ S. W. ¼	36	22	66

SOUTH PUEBLO TOWN LOTS.

No. block.	No. lots.
	All of blocks 1, 2, 3, 4, 5, & 6 = 32 lots each.
Tract 8	Lots 17 to 32, inclusive.
" 9	" 17 to 32, "
" 10	" 26 to 32, "
44	All of blocks 11, 12, 13, 14, 15 = 32 lots each.
18	Lots 1 to 16, inclusive, & 19, 20, 23, 24, 27, 28, 31, & 32.
19	" 1 to 24, inclusive, & 27, 28, 29, 31, & 32.
Tract 20	" 1 to 8 " & 25 to 32, inclusive.
	All of blocks 21, 22, 23, 24, & 25 = 32 lots each.
27	All of block = 12 lots.
28	Lots 3, 4, 7, 8, 11, 12, 15, 16, 19, 20, 23, 24, 27, 28, 31, & 32.
29	" 9 to 16 & 24, inclusive.
Tract 30	" 1 to 5, inclusive, & 30 to 32, inclusive.
	All of blocks 31, 32, 33, & 34 = 22 lots each.
37	Lots 1 to 12, inclusive.
38	" 3, 4, 7, 8, 11, 12, 15, 16, 23, 24, 27, 28, 31, & 32.
	All of blocks 41, 42, 43, 44, & 45 = 32 lots each.
	All of blocks 51, 52, 53, 54, 55, & 56 = 32 lots each.
57	Lot 4.
60	" 19, 20, 23, 24, 27, 28, 31, & 32.
	All of blocks 61, 62, 63, 64, 65, & 66 = 32 lots each.
70	Lots 9 to 16 & 19, 20, 23, 24, 27, & 28.
	All of blocks 71, 72, 73, 74, 75, 76 = 32 lots each.
Tract 79	Fract. lots 24 to 28.
80	Lots 3, 4, 7, 8, 11, 12, 15, 16, 19, 20, 23, 24, 27, 28, 31, & 32.

No. block.	No. lot.
	All of blocks 81, 82, 83, 84, 85, & 86 = 32 lots each.
90....	Fract'l lots 7, 8, 9, 10, 11, 12, & lots 15 & 16.
	All of blocks 101, 102, 103, 104, & 105 = 32 lots each.
106....	Lots 1 to 14, & 17 to 32, incl.
45 107....	Lots 1 to 6, inc.
	All of blocks 111, 112, 113, 114 = 32 lots each.
115....	Lots 1 to 30, inc.
116....	" 1 to 12 & 17 to 32, inc.
	All of blocks 121, 122, 123, 134 = 32 lots each.
125....	Lots 1 to 31, incl.
126....	" 1 to 30 "
	All of blocks 131, 132 = 32 lots each.
133....	Lots 1 to 28, incl.
	All of blocks 134, 135, 141, 142, 143, 144, 145, 146 = 32 lots each.
136....	Lots 1 to 14 & 17 to 32, incl.
147....	Lots 1 to 8 & 24 to 32, inc., & fract. 20 to 23, inc.
	All of blocks 151, 152, 153, 154, 155, 156, 161, 162, 163, 164, 165, & 166 = 32 lots each.
157....	Fract. lots 1, 2, 3, 4, & 5.
158....	Bl'k entire, 12 lots.
159....	Lots 1 to 32, incl., & 62 to 71, incl.
Tract 160 ...	Lots 1, 2, 3, 29, 30, 31, 32.
" 170....	" 3 to 11 & 17 to 32, incl.
	All of blocks 171, 172, 173, 174, 175, 176 = 32 lots each.
Tract 180 ...	Lots 3 to 8 & 11, 12, 15, 16, 19, 20, 23, 24, & fract'l 27 to 32, incl.
" 190 ...	Fract'l lots 14, 15, 16.
" 200 ...	Lots 3, 4, 7 to 15, & 24, 25, 26, 27, 28, 31, & 32.
	" 1 to 22, incl.
	All of blocks J, K, L, & M.
46 N....	Lots 1, 2, 3, 5, & 9.
O....	" 1 to 13, incl., & 15.
P	" 1 to 16 & 18 to 20, incl.
Q	" 1 to 3 & 6 to 10 "
R	Bl'k entire.
S	Lots 1 to 5, & 7 to 14, incl.
	All of blocks T, U, V, W, X, & Y.

Total valuation, $208,539.00.

County tax	1,459 75
School tax	417 07
Territorial tax	312 80
Sys. board tax	148 15
Interest	291 09
Total	$2,628 86

N. W. DUKE.
Treasurer of Pueblo Co.

The land described in said tax receipt is identically the same land as that embraced in said preliminary eleven-league selection, exclusive of the land awarded to homestead and pre-emption settlers as aforesaid, and exclusive of the 920 acres withdrawn from said selection as aforesaid, the only difference in description arising from the fact that
47 what is described in said tax-receipt as "Sputh Pueblo town-lots" are designated in the descriptive list of the same land hereinbefore given by Government numbers according to the public survey. The plaintiff paid said taxes to said treasurer involuntarily, under protest and under menace by said treasurer, that unless said taxes, amounting to $2,628.86 as aforesaid, were promptly paid by the plaintiff, he, the said treasurer, would sell all said land in said tax-receipt described

for taxes, the said plaintiff claiming at the time of paying said taxes that the same were erroneous and illegal and were assessed and levied upon said property in said tax-receipt described, when said property was not subject to taxation. I. K. Brewster listed said property on the tax-schedule of A. D. 1873. At the time of listing thereof the said Brewster was a special agent of said plaintiff, with limited authority; as such special agent he was only instructed to list all property of the plaintiff which was subject to taxation for the year A. D. 1873, and he received no other instructions upon the subject. On the first day
48 of July, A. D. 1874, when said taxes were paid as aforesaid, it was agreed by and between the plaintiff and defendant herein that if it should be judicially determined that said taxes were illegal and erroneous or that said land in said tax-receipt described was not subject to taxation for the year A. D. 1873, the defendant would refund and pay to the plaintiff the said sum of $2,628.86, together with interest thereon from July 1st, A. D. 1874, at ten per cent. per annum, up to the date of such judicial determination. If from the facts aforesaid, under the law, it appears to the court that said taxes were illegal and erroneous, or that said lands in said tax-receipt described were not lawfully subject to taxation for the year A. D. 1873, in manner and form aforesaid, then the finding of the court shall be for the plaintiff, whose damages shall be assessed by the court at $2,628.86, with interest thereon at ten per cent. per annum from July 1st, 1874, up to the date of
49 such finding; if the said facts, under the law, show that the plaintiff is not entitled to recover from the defendant, that said taxes were legal, due, collectable, and payable at the time the same were paid, that the lands in said tax-receipt described were subject to taxation May 1st, 1873, then the finding of the court shall be for the defendant, and upon the finding of the court the proper judgment in assumpsit for the plaintiff or for the defendant, as the case may be, shall be entered of record in said court.

CENTRAL COLORADO IMPROVEMENT COMPANY,
Plaintiff,
By HENRY C. THATCHER,
Its Attorney.
BOARD OF COUNTY COMMISSIONERS OF PUEBLO COUNTY,
Defendant,
By ALLEN A. BRADFORD,
Its Attorney.

And afterwards, to wit, on the 14th day of December, A. D. 1874, the same being one of the days of said December term of said court, the following proceedings were had and done in said court in said cause, to wit:

50

CENTRAL COLORADO IMPROVEMENT Company *vs.* BOARD OF COUNTY COMMISSIONERS OF PUEBLO County.	Assumpsit order entered December 14, 1874.

This day came the plaintiff, by H. C. Thatcher, its attorney, and the def't, by Allen A. Bradford, its att'y, also came, and the said parties submit themselves herein to the consideration and judgment of the court upon the agreed statement of facts herein filed without the inter-

vention of a jury, the said parties expressly waiving the right to submit the issues herein to a jury. And after hearing the arguments of counsel, and all and singular the premises being seen and fully understood, the court finds the issue for the plaintiff, and assessed the plaintiff's damages at two thousand seven hundred and forty-eight dollars. And it is thereupon considered by the court that the said plaintiff do have and recover of and from the said defendant the said sum of two
51 thousand seven hundred and forty-eight dollars so as aforesaid by the court aforesaid assessed for its damages, and also its costs and charges by it about its suit in this behalf expended, to be taxed, and that execution issue therefor.

To which judgment of said court the said defendant, by its counsel, then and there excepted, and because none of said matters otherwise appear, it is prayed that these, its exceptions, might be signed and sealed by the court and made a part of the record in said cause, and it is accordingly done this 6th day of January, 1875.

JAMES B. BELFORD, [SEAL.]
Presiding Judge.

TERRITORY OF COLORADO,
County of Pueblo, ss:

I, Geo. A. Bute, clerk of the district court of the third judicial district of Colorado Territory, within and for the county of Pueblo, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record in a certain cause pending in said court on the law
52 side thereof, wherein The Central Colorado Improvement Company is plaintiff, and The Board of County Commissioners of Pueblo County defendant.

Witness my hand and the seal of said court hereunto affixed, this thirtieth day of January, 1875.

[SEAL.] GEORGE A. BUTE, *Clerk.*

Assignment of errors.

TERRITORY OF COLORADO, *ss:*

In the supreme court, to the February term, A. D. 1875.

BOARD OF COUNTY COMMISSIONERS OF THE County of Pueblo, appellant,
vs.
THE CENTRAL COLORADO IMPROVEMENT COMPANY, appellee. } Assumpsit.

And now comes the said Board of County Commissioners of the County of Pueblo, appellant, by A. A. Bradford, Orris Blake, and Spier Whitaker, its attorneys, and says that in the record
53 and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

First. The finding of the court was manifestly against the facts agreed upon by the parties, and which were all the evidence in the case.

Second. Upon the evidence in the case, being facts agreed upon by the parties, the finding and judgment of the court below should have been for the said appellant.

Third. The finding and judgment of the court below are not sustained

by the evidence in the case, being facts agreed upon by the parties, and are contrary to law.

By reason whereof the said appellant respectfully prays that said judgment may be reversed; said appellant also prays that upon a reversal of said judgment, this honorable court may give judgment in favor of said appellant, upon the record and facts appearing therein, etc.

A. A. BRADFORD,
ORRIS BLAKE, AND
54 SPIER WHITAKER,
Attorneys for Appellant.

TERRITORY OF COLORADO, *ss:*

In the supreme court, to the February term, A. D. 1875.

THE CENTRAL COLORADO IMPROVEMENT COMPANY, appellee,
ats.
THE BOARD OF COUNTY COMMISSIONERS OF the County of Pueblo, appellant. } Joinder in error.

And the said Central Colorado Improvement Company, appellee, herein now comes and says that there is no error, either in the record and proceedings aforesaid, or in the giving of judgment aforesaid, in manner and form as above assigned: and therefore it prays that the said judgment may be affirmed, and that its costs may be adjudged to it, &c.

By HENRY C. THATCHER AND
CHARLES E. GAST,
Att'ys for Appellee.

55 (Endorsed:) G. D. No. 205 Term No. 75, February term, 1875. Board of County Commissioners of the County of Pueblo, appellant, vs. The Central Colorado Improvement Company, appellee. Appeal from the district court of the county of Pueblo. Record. Filed February 10th, 1875. Jno. W. Webster, clerk. A. A. Bradford, Orris Blake, and Spier Whitaker, att'ys for appellant.

56 And afterwards, on, to wit, the 11th day of February, A. D. 1875, the same being one of the regular days of the February term, A. D. 1875, of the supreme court of the Territory of Colorado, the following proceedings were had in the above entitled cause, and entered of record, which is in words and figures as follows, to wit:

BOARD OF COUNTY COMMISSIONERS OF THE County of Pueblo, appellant,
vs.
THE CENTRAL COLORADO IMPROVEMENT COMpany, appellee. } G. D. No. 205. T. No. 75. Appeal from district court, Pueblo County.

Now, on this day, comes the said appellant, by A. A. Bradford, esq., and Mess'rs Blake & Whitaker, its attorneys, and the said appellee, by H. C. Thatcher, esq., its attorney, also comes, and this cause came on to be heard, and it is ordered by the court that the said appellant file its brief and arguments by Wednesday, the seventeenth day of February, next, and that said appellee file its answer thereto by the twenty ninth

day of February next, and the said appellant reply thereto within
57 fifteen days next thereafter.

And afterwards, on, to wit, the eighteenth day of February, A. D. 1875, the same being one of the regular days of the February term, A. D. 1875, of the supreme court of the Territory of Colorado, the following proceedings were had in the above-entitled cause, and entered of record, which is in words and figures as follows, to wit:

BOARD OF COUNTY COMMISSIONERS OF THE County of Pueblo, appellant. *vs.* THE CENTRAL COLORADO IMPROVEMENT COMpany, appellee.	205–75. Appeal from district court, Pueblo County.

At this day comes the said appellant, by A. A. Bradford, esq., and Messr's Blake and Whitaker, its attorneys, and the said appellee, by H. C. Thatcher, esq., its attorney, also comes, and, upon motion of said appellee, it is ordered by the court that the time be extended for said
58 appellee to file its arguments herein until Friday, the fifth day of March next ensuing.

And afterwards, on, to wit, the twenty-fifth day of March, A. D. 1875, the same day being one of the regular days of the February term, A. D. 1875, of the supreme court of the Territory of Colorado, the following proceedings were had in the above-entitled cause, and entered of record, which is in words and figures as follows, to wit:

BOARD OF COUNTY COMMISSIONERS OF THE County of Pueblo, appellant, *vs.* THE CENTRAL COLORADO IMPROVEMENT COMpany, appellee.	205–75. Appeal from district court, Pueblo County.

Now, on this day, comes the said appellant, by A. A. Bradford, esq., and Blake and Whittaker, esq., its attorneys, and the said appellees, by H. C. Thatcher, esq., its attorney, also comes; and this cause comes on to be heard as well upon the transcript of judgment and other
59 proceedings had in the said district court for the county of Pueblo, as also upon the matters herein assigned for error; the same having been argued by counsel, and it appearing to the court that there is manifest error in the record and proceedings aforesaid, and in giving judgment aforesaid, it is considered by the court that the judgment in form aforesaid given be in all things reversed, annulled, and altogether holden for naught; and this cause is remanded to the said district court, with direction to the court to enter judgement for appellant; that the opinion of the court filed herein be recorded; and that the said appellant do have and recover of and from the said appellee its costs and charges in this behalf expended to be taxed, and that it have execution therefor.

And afterwards, on, to wit, the same day, it being one of the regular days of the February term, A. D. 1875, of the supreme court of the Territory of Colorado, the following affidavit in compliance
60 with rule twenty-eighth of said supreme court was filed in said cause, which said affidavit and endorsement thereon is in words and figures as follows, to wit:

TERRITORY OF COLORADO:

In the supreme court, February term, A. D. 1875.

BOARD OF COUNTY COMMISSIONERS OF THE County of Pueblo, appellant, *vs.* THE CENTRAL COLORADO IMPROVEMENT COMpany, appellee.	No. 205–75. Appeal from the district court of the county of Pueblo.

ORRIS BLAKE, being duly sworn, on oath deposes and says, he is one of the attorneys for the appellant in the above-entitled cause; that the matters presented by the record in said cause were litigated in good faith about a matter in actual controversy between the parties, as shown by the record; and that the opinion of the honorable supreme court is not sought with any other design than to adjudicate and settle the law relative to the matter in controversy between the parties to the record.

See rule xxviii, supreme court.

61

ORRIS BLAKE.

Subscribed and sworn to before me this 25th day of March, A. D. 1875.
[SEAL SUPREME COURT.] JNO. W. WEBSTER,
Clerk Supreme Court.

(Endorsed:) No. 205–75. In the supreme court, February term, A. D. 1875. Board of County Commissioners of the County of Pueblo, appellant, vs. The Central Colorado Improvement Company, appellee. Affidavit in compliance with rule 28 supreme court. Filed March 25th, 1875. Jno. W. Webster, clerk. Allen A. Bradford, Orris Blake, and Spier Whitaker, att'ys for appellant.

And afterwards, on, to wit, the 12th day of May, A. D. 1875, there was issued in accordance with law a writ of error in the above-entitled cause, signed and sealed by the clerk of the supreme court of the Territory of Colorado, and filed therein, which said original writ of error, hereto attached, is in words and figures as follows, to wit:

62

63 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the Territory of Colorado, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the Territory of Colorado, before you, between The Central Colorado Improvement Company, plaintiff in error, and the Board of County Commissioners of the County of Pueblo, defendant in error, a manifest error hath happened, to the great damage of the said The Central Colorado Improvement Company, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be herein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same

64

at Washington on the first Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the fifth day of October, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] JNO. W. WEBSTER,
Clerk Supreme Court, Territory of Colorado.

(Indorsed:) Central Colorado Improvement Company, plaintiff in error, vs. The Board of County Commissioners of Pueblo County, defendant in error. Writ of error. Filed May 12th, 1875. Jno. W. Webster, clerk.

65 And afterwards, on, to wit, the 18th day of May, A. D. 1875, there was filed in the office of the clerk of the supreme court of the Territory of Colorado a citation directed to the defendant in error herein, which said original citation, hereto attached, together with the service thereon endorsed, is in words and figures as follows, to wit:

66 The United States of America to the Board of County Commissioners of the County of Pueblo, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein The Central Colorado Improvement Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Moses Hallett, chief justice of the supreme court of the Territory of Colorado, this 13th day of May, A. D. 1875, in the year of our Lord one thousand eight hundred and seventy-five.

MOSES HALLETT,
C. J. Sup. Court, Col. Ter.

PUEBLO, COLORADO, *May 13th A. D.* 1875.

67 I, A. A. Bradford, attorney of record in the above cause, hereby accept service of the within citation in behalf of The Board of County Commissioners of the County of Pueblo, defendant in error in the above cause.

ALLEN A. BRADFORD,
Attorney for Defendant in Error.

(Indorsed:) Central Colorado Improvement Company, plaintiff in error, vs. Board of County Commissioners of Pueblo County. Citation. Filed May 18th, 1875. Jno. W. Webster, clerk.

68 And afterwards on, to wit, the same 18th day of February, A. D. 1875, there was filed in the office of the clerk of the supreme court of the Territory of Colorado a bond to the defendant in error in the above-entitled cause, which said bond, together with the endorsement thereon, is in words and figures as follows, to wit:

Know all men by these presents that we, the Central Colorado Improvement Company, a corporation duly created and organized under and by virtue of the laws of Colorado Territory, as principal, and William S. Jackson and Charles B. Lamborn, of the town of South Pueblo, in the county of Pueblo, and Territory of Colorado, as sur/ties, are held and firmly bound The Board of County Commissioners of the County of Pueblo in the full and just sum of one thousand dollars, lawful money of the United States, to be paid to the said Board of County Commissioners of the County of Pueblo, their certain attorney, successors,
69 or assigns; to which payment, well and truly to be made, *be* bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with the corporate seal of the Central Colorado Improvement Company, attested by William J. Palmer, its president, and Thomas C. Parish, its secretary, and sealed also with the seal of the sur/ties herein, and dated this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately, at a term of the supreme court of the Territory of Colorado, in a suit depending in said court between The Board of County Commissioners of the County of Pueblo, appellant, and The Central Colorado Improvement Company, appellee, judgment was rendered against the said Central Colorado Improvement Company, and the said Central Colorado Improvement Company having obtained its writ of error from the Supreme Court of the United States, and filed a copy thereof
70 in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of County Commissioners of the County of Pueblo, citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the second Monday of October next:

Now the condition of the above obligation is such, that if the said Central Colorado Improvement Company shall prosecute its said writ of error to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

COLORADO IMPROVEMENT COMPANY SEAL.

THE CENTRAL COLORADO IMP'T CO.,
By WM J. PALMER, *Pres'd't.*
THO'S C. PARRISH, *Secretary.*
WM S. JACKSON. [SEAL.]
CHA'S B. LAMBORN. [SEAL.]

71 Sealed and delivered in presence of—
H. C. THATCHER,
CHA'S E. GAST.

Approved May 13, 1875.

MOSES HALLETT,
C. J. Sup. Court, Col. Ter.

(Endorsed:) Central Colorado Improvement Company, plaintiff in error, vs. Board of County Commissioners of Pueblo County, defendant in error. Bond to defendants in error. Filed May 18th, 1875. Jno. W. Webster, clerk.

72 And afterwards on, to wit, the same 18th day of May, A. D. 1875, there was filed in the office of the clerk of the supreme court of the Territory of Colorado an affidavit of valuation, which said affidavit, together with the endorsement thereon, is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Pueblo, ss:

Personally came before me, clerk of the district court of the third judicial district Colorado Territory, Charles B. Lamborn, who, being duly sworn, deposes and says that he is vice-president of the Central Colorado Improvement Company; that The Central Colorado Improvement Company was appellee in a cause lately depending in the supreme court of the Territory of Colorado, entitled "Board of County Commissioners of the County of Pueblo, appellants, vs. The Central Colorado Improvement Company, appellee, in assumpsit," and that
73 on final hearing of said cause, judgment was rendered against The Central Colorado Improvement Company, and that the said Central Colorado Improvement Company, being dissatisfied with the judgment rendered in said cause by the said court, has obtained from the Supreme Court of the United States a writ of error to remove said cause to the said Supreme Court of the United States, and this deponent further says that the amount in controversy in said cause exceeds the sum of one thousand dollars.

CHA'S B. LAMBORN.

Subscribed and sworn to this thirteenth day of May, A. D. 1875, before me.

{DISTRICT COURT PUEBLO COUNTY SEAL.} GEORGE A. BUTE, *Clerk*,
By M. G. BRADFORD, *Deputy*.

(Endorsed:) Central Colorado Improvement Company, plaintiff in error, vs. Board of County Commissioners of Pueblo County, de-
74 fendant in error. Affidavit of valuation. Filed May 18th, 1875. Jno. W. Webster, clerk.

75 And afterwards, on, to wit, the 25th day of March, A. D. 1875, there was filed in the office of the clerk of the supreme court of the Territory of Colorado the opinion of the court filed in said cause, which is hereunto attached, in accordance with the amendment to the eighth rule of the Supreme Court of the United States, which said opinion is in words and figures as follows, to wit:

In the supreme court, February term, 1875.

BOARD OF COUNTY COMMISSIONERS OF THE County of Pueblo
vs.
CENTRAL COLORADO IMPROVEMENT COMPANY. } Appeal from district court of Pueblo County.

HALLETT, C. J.:

The question to be determined in this case is whether the land upon which the tax was levied was, at the date of the levy, the prop-
76 erty of the United States, and therefore exempt from taxation.

It appears that a very large tract of land, including that taxed, was, in the year 1843, granted by the Mexican government to Gervacio Nolan, and that our Government subsequently acquired dominion of the county in which that tract is located, now a portion of the county of Pueblo. In the treaty of Guadaloupe-Hidalgo, (9th Statutes at Large, 929,) titles existing under Mexican law were recognized, and it was declared that property of every kind should be inviolably respected. Under this treaty the title of Nolan to the entire tract, if valid at the time it was created, or subsequently perfected under Mexican law, could be

unassailable. It is, however, contended that the grant was excessive in quantity, the governor of Mexico having authority under the act of 1824 and the regulations of 1828 to convey eleven leagues only. United States vs. Vallejo, (1 Black, 541;) United States vs. Vigil, (13 Wall., 449.) The force of this objection was fully appreciated by the owner of the title, if we may judge from the circumstance that he was un-
77 willing to rely upon his title without the aid of Congress. On the first of July, 1870, (16 Statutes at Large, 646,) Congress confirmed the grant to the extent of eleven leagues, to be located within the bounds of the original grant, deducting therefrom lands occupied by actual settlers, and allowing the grantee to take other lands elsewhere in lieu of those claimed by the settlers. The Mexican title thus recognized, if invalid before that time, was no longer so, if the grantee or his assignee should accept the provisions of the act, and it appears from the agreed case that this has been done. Whatever may be said of the title given by the Mexican government, we think that the effect of this act confirmation is to establish the title to the eleven leagues therein mentioned from the date of the grant by the Mexican government. The language of the act can only be applied to an existing grant, thus excluding the notion that Congress intended to create a new estate. The fact
78 that Congress assumed to act in the premises, may be cited to show that the General Government had some interest in the land, but this may be conceded without abandoning the position assumed. In Fremont's case, (17 How., 542,) a Mexican grant of ten leagues of land, to be located in a certain district of country, was said to convey a vested interest in the quantity of land mentioned in the grant, although no land was specifically described. So here Congress appears to have acted upon the assumption that the grant to Nolan was good for eleven leagues to be located within the bounds of the original claim, and this action of Congress is not a grant per se, but a recognition of a pre-existing right in the grantee conferred by the Mexican government. Consistantly with this theory it may be maintained that the legal title remains in the General Government until all conditions of the act of Congress have been complied with, while the beneficial estate in the land is
79 vested in the citizen, giving to the local government a right to collect taxes assessed upon it. (Witherspoon vs. Duncan, 4 Wal., 210.)

In this view the act of Congress was necessary, not to create the estate, but to attach the grant to a particular tract by prescribing the manner of locating it. It matters not that in certain contingencies, as, for instance, if the grantee had refused to accept the provisions of the act of Congress, and had failed to maintain or had abandoned his Mexican title, the land would have reverted to the United States. In a recent case (U. P. R. Co. vs. McShane) the Supreme Court held that a contingent right in the Government to make another grant upon the failure of the first grantee to make sale of the land within a time specified was not sufficient to exempt the land from taxation. Nor is the circumstance that all the conditions of the act confirming the grant had not been performed at the time when the tax was levied at all significant as to the right of the Territory to collect
80 revenue from the land. Conceding all these things, the controlling fact remains that before the tax was levied the land had been identified as the subject of the grant, and it was held by a title which accrued long before the United States could have acquired an interest in it. By confirming the grant Congress recognized the title as paramount to that of the General Government, and the location having been made appellee holds not from the United States, but from the

prior owner of the soil. The fact that appellee claimed at first too much land, and that a portion was afterwards withdrawn upon the suggestion of the Commissioner of the General Land-Office, does not materially affect the question. Payment was not made upon the 920 acres withdrawn, and as to the remainder of the location, in view of all the facts, it is impossible to say that it was at the time when the tax was levied, or has ever been, public land of the United
81 States. In this feature the case is distinguishable from Railway Co. vs. Prescott (16 Wal., 603) and U. P. R. Co. vs. McShane, decided at the present term, where a grant was made by the United States upon certain conditions to be performed by the grantee. Until those conditions were performed it was thought that no title could pass, and the land remained in the United States, and of course it was exempt from taxation. The case at bar is altogether different, inasmuch as appellee's title is derived from the Mexican government and not from the United States. Whitney vs. Gunderson (31 Wis., 359) is more in point, but we are not disposed to follow it. The view here suggested has been fully adopted in California, and appears to rest upon a sound principle. People vs. Crockett, (33 Cal., 150.)

The judgment of the district court is reversed and the cause remanded, with directions to the court below to enter judgment for appellant.

82 (Endorsed:) 75. Board of County Commissioners County of Pueblo vs. Central Colo. Improvement Co. Opinion. Recorded. Filed March 25, 1875. Jno. W. Webster, clerk.

83 UNITED STATES OF AMERICA,
Territory of Colorado, ss:

I, Jno. W. Webster, clerk of the supreme court of the Territory of Colorado, do hereby certify that the above and foregoing is a true, correct, complete, and carefully compared copy of the record and proceedings in the supreme court of the Territory of Colorado, in case of The Board of County Commissioners of the County of Pueblo, appellant, vs. The Central Colorado Improvement Company, appellee, including the transcript of record from court below, assignment of errors, joinder in error, all orders of the supreme court, including the judgment-order, to which is attached the original writ of error, the original citation, and endorsement of service thereon. Also copies of the affidavit under rule 38, supreme court Colorado, bond to defendant in error, affidavit of valuation, with all endorsements thereon, to which is attached a copy of the opinion of the supreme court, under amendment to rule 8th Supreme Court of the United States, as the same appears from the record and files in my office.

84 In witness whereof I have hereunto subscribed my name and affixed the seal of the supreme court of the Territory of Colorado, at Denver, this 7th day of June, A. D. 1875.

[SEAL.] JNO. W. WEBSTER,
Clerk Supreme Court Territory of Colorado.

Clerk's fees for transcript:

150 folios, at 20	$30 00
Certificate & seal	1 00
	$31 00

Paid June 7th, 1875, by plaintiff in error.

JNO. W. WEBSTER,
Clerk Supreme Court Colorado Territory.

(Indorsement on cover:) The Central Colorado Improvement Company, plaintiff in error, vs. Board of County Commissioners of Pueblo County, defendant in error. Transcript of record. In error to supreme court of the Territory of Colorado.

(Second indorsement on cover:) No. 112. The Central Colorado Improvement Company, plaintiff in error, vs. The Board of County Commissioners of the County of Pueblo. Colorado Terr'y sup. court. Filed 10th September, 1875.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

THE CENTRAL COLORADO IMPROVEMENT CO., *Plaintiff in Error,*
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO. } No. 112.

BRIEF FOR PLAINTIFF IN ERROR.

This cause is brought here by writ of error to the Supreme Court of the Territory of Colorado.

The plaintiff in error was plaintiff below, in an action to recover money paid for taxes upon lands, and judgment was given for defendant. The question was, and is here, whether the lands were not exempt from taxation as being the property of the United States.

THE CASE.

The facts which raise this question appear by an agreed statement upon which the cause was submitted for the decision of the court below, and which is found in the record, at pages 6 to 17. The substance thereof is as follows:

ORIGINAL GRANT.

In the year 1843, Governor Armijo, of New Mexico, granted to Gervacio Nolan a tract of land bounded by monuments and natural objects, and containing by esti-

mates 500,000 acres—then in New Mexico; now in Pueblo county, Colorado.

The plaintiff's company has succeeded to all the rights of Nolan in this tract.

ACT OF CONGRESS.

Congress, on the 1st day of July, 1870, (16 Stat., 646,) passed the following act:

AN ACT to confirm the title of the heirs of Gervacio Nolan, deceased, to certain lands in the Territory of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant to Gervacio Nolan, late of the valley of Taos, deceased, approved by the surveyor general of New Mexico, October eighth, eighteen hundred and sixty-one, and designated as number forty-eight in the transcript of private land claims in New Mexico, transmitted to Congress by the Secretary of the Interior on the twelfth day of May, eighteen hundred and sixty-two, but being now within the limits of the Territory of Colorado, is hereby confirmed to the extent of eleven square leagues.

SEC. 2. *And be it further enacted*, That the exterior lines of said claim of eleven leagues, as confirmed by this act, shall be adjusted according to the lines of the public surveys as near as practicable, but in a compact form, and the claims of all actual settlers falling within the limits of the located claim above referred to shall be adjusted to the extent which will embrace their several settlements upon their several claims being established either as pre-emptions or homesteads according to law, and for the aggregate of the *arears* [areas] of claims so established under the pre-emption or homestead acts, the heirs of said Nolan, or their legal representatives, shall be entitled to locate a like quantity of PUBLIC LANDS, not mineral, according to the lines of the public surveys, and not to

exceed one hundred and sixty acres in one section; *Provided*, That such location shall be made within the bounds of the original grant by the order of Cornelio Vigil to Gervacio Nolan.

SEC. 3. *And be it further enacted*, That it shall be the duty of the Commissioner of the General Land Office to cause the lines of the public surveys to be run in the regions where a proper location would place the said Nolan claim, and the expense of the same shall be paid out of any moneys in the Treasury not otherwise appropriated; *but before the confirmation provided for by this act shall become legally effective, the heirs of the said Gervacio Nolan, or their legal representatives, shall pay the cost of so much of said surveys as inures to their benefit respectively*, and that all actual settlers whose claims may be adjusted as valid shall have a right to enter their improvements by a strict compliance with the pre-emption or homestead laws.

SEC. 4. *And be it further enacted*, That upon the adjustment of said claim of the heirs of Gervacio Nolan, according to the provision of this act, it shall be the duty of the surveyor general of the district to furnish *properly approved plats* to said claimants, or their legal representatives, which shall be *evidence of title*, the same to be done according to such instructions as may be given by the Commissioner of the General Land Office: *Provided, however, That when said lands are so confirmed, surveyed, and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.*

SEC. 5. [Limits the time for making the selection.]

Approved July 1, 1870.

PROCEEDINGS UNDER THE ACT.

Under this act the lands were surveyed; and the company made selection of a body of land appearing by the plats to contain eleven square leagues, and in April, 1872,

furnished a plat thereof to the Surveyor General, "subject to the revision of the Commissioner of the General Land Office and Secretary of the Interior." Rec., p. 7.

Within this compact body, however, were contained 6,565.42 acres claimed by homestead and pre-emption settlers; and the act of July, 1870, above cited, had provided that in such case the company should be indemnified by other lands still within the original grant. The company accordingly selected other lands, and notified the department thereof on the 9th day of January, 1874.

By a revision and correction of the plat of the public surveys of the lands in question, it was made to apppear—what at the time of the selection could not be known—that the subdivisions selected exceeded the authorized eleven leagues by the quantity of 915.95 acres, and on the 9th of March, 1874, the company relinquished subdivisions to that amount, and the relinquishment was accepted by the Commissioner of the General Land Office.

On the 31st of March, 1874, the Commissioner directed the Surveyor General to prepare the plat of the selection made by the claimants, as directed to be made by the act of July, 1870, section 4.

On the 31st of March, 1874, and at divers times thereafter, the company applied to the Surveyor General for an estimate of the costs of survey to be paid by them, and were ready to pay the same; but the Surveyor General informed the company that until both the original selection and the second selection should be approved by the Commissioner of the Land Office, he could make no estimate, and "that until the acceptance and approval of the final selections made and to be made by the confirmees of the grant, he could not determine the Government cost of the survey, by reason of the different prices being fixed by the Government for the different grades of work;"

so that neither has the cost been paid, nor have the properly approved plats been furnished to the company.

Rec , p. 13, fols. 36, 37.

The Tax.

In 1873 the Commissioners of Pueblo ordered a certain tax to be imposed upon all taxable property in Pueblo county. The land in the preliminary eleven-league selection, excluding what was awarded to pre-emption and homestead settlers, and what was relinquished as excesses, was listed on the tax schedule and specifically described by subdivisions, and on the said lands a tax was levied of $2,028.86, and the tax was paid by the company "involuntarily and under protest, and under menace by said treasurer that unless said taxes, amounting to $2,028.86 as aforesaid were promptly paid by the plaintiff, he, the said treasurer, would sell all the land on said tax receipt described," being the land also described in the tax schedule.

The Suit.

The company brought an action in the district court of the third judical district of Colorado to recover back the money so paid. The cause was submitted upon the statement of facts above cited, (Rec., p. 17,) a jury being expressly waived, and judgment was given for plaintiff, but upon appeal to the Supreme Court of the Territory the judgment was reversed and judgment ordered to be entered for defendant. Rec., p. 20.

Assignment of Error.

1. The Supreme Court erred in reversing the judgment for plaintiff and ordering judgment to be entered for defendant.

2. And in ruling and deciding that the lands in question were subject to taxation by the Territory when in fact they were the property of the United States.

3. And in ruling and deciding that the said lands were within the description of the property on which the statutes of the Territory authorized the defendant to impose a tax.

I.

Gervacio Nolan took no title to the tract granted him by Governor Armijo. That officer had no authority to grant more than eleven leagues (48,825 acres) to one person. Hartnell's Ex. *vs.* The United States, 22 How., 286, 289, United States *vs.* Vallejo, 1 Black, 541, 551. He granted a specific tract containing more than ten times as much.

There are some cases in which the acts of an agent in excess of his authority have been held good *pro tanto*, and to the extent of his actual authority, where the unauthorized could be clearly distinguished from the authorized act; but this is not such a case.

See Story on Agency, sec., 167, citing Doe *vs.* Prideux, 10 East., 158.

In that case one having authority to grant leases for three lives or twenty-one years, made a lease for 99 years, determinable on those lives.

The court said "It was argued that the leases, if not good for the 99 years might still be good for 21 years, should any of the lives so long continue, but it is sufficient to say that no authority was cited, to show that a court of law has ever held itself entitled to consider such a lease as good in part."

Nor is this the case of the grant of such a quantity as the officer was competent to grant, to be thereafter selected within certain limits containing a greater quantity. It is not a grant of eleven leagues to be selected out of the 500,000 acres, but it is the grant of a certain tract of land larger than any which the officer was authorized to give. It is submitted his act was absolutely void, inasmuch as the eleven leagues which the officer might have granted

are in no way distinguishable from the remaining ninety leagues which he could not grant.

II.

But even if good *pro tanto*, and equivalent to the grant of eleven leagues out of the hundred and two, the grant did no more than bind the Government to convey to the grantee so much land within the specified limits. Courts could not enforce this obligation or take any notice of it. The United States might still have granted away the entire tract and the courts would be bound by the grants.

"As between the individual claimants from the Government, the title of the party who had obtained a grant for the specific land would be the superior and better one."

U. S. *vs.* Fremont, 17 How., 558.

It seems idle, then, to say that the land which the United States might have granted to any one, prior to the passage of the act of July 1, 1870, was not the property of the United States.

III.

What is the effect of that act and the proceeding under it? The first section of the act in terms confirms the grant to the extent of eleven leagues, but only in the manner therein provided, and subsequent provisions allow the company to select the lands, and entitles it upon payment of the costs of survey to receive evidence of title.

But it is made an express condition that until the money be paid the confirmation shall not be legally operative.

Not only then is the company without evidence of title, but the grant of eleven leagues is not yet confirmed The payment of the money is a condition precedent not only to the issue of evidence of title but to the confirmation itself.

This then is not simply the case of a confirmation or

grant upon condition, such as the courts have construed not to divest the title of the United States, even in equity, until the condition be performed, (Railway Co. *vs.* Prescott, 16 Wall., 608; Union Pacific Railroad *vs.* McShane, 22 Wall., 444,) but it is a case where the United States have expressly reserved all their rights until the money be paid, and by such express reservation placed the question beyond the scope of construction.

In the case of the Union Pacific Railroad *vs.* McShane, this court commenting on case of the Railway Co., *vs.* Prescott, said (p., 462):

"That the payment of these costs of surveying the land is a condition precedent to the right, to receive the title from the Government, can admit of no doubt. Until this is done, the equitable title of the company is incomplete. There remains a payment to be made to perfect it. There is something to be done without which the company is not entitled to a patent. The case clearly is not within the rule which authorizes state taxation of lands, the title of which is in the United States."

"The reason of this rule is also fully applicable to this case. The United States retains the legal title, by withholding the patent, for the purpose of securing the payment of these expenses, and it cannot be permitted to the States to defeat or embarrass this right, by a sale of the lands for taxes. If such a sale could be made it must be valid if the land is subject to taxation, and the title would pass to the purchaser. If no such title could pass, then it is because the land is not liable to the tax, and the treasurers of the counties have no right to assess it for that purpose."

But the court went still further in that case. It was said that certain of the lands which had not been patented to the railroad company had nevertheless been mortgaged by the company, with the consent of Congress given by statute, and that the mortgage conveyed the legal title

out of the United States. To this, the court replied that they would not go into that question "because we are satisfied the United States, until she conveys them by patent or otherwise, has *an interest*, whether it be legal or equitable, which the State of Nebraska is not at liberty to divest by the exercise of the right of taxation." P. 464.

IV.

The selection made by the company must be approved by the Commissioner of the General Land Office, and such approval has not been given. The agreed statement shows that the selection was by the company reported to the Surveyor General, "subject to the revision of the Commissioner of the General Land Office and the Secretary the Interior" (Rec., fol. 20, p. 7.) It does not appear that such revision has been made; to the contrary thereof, the Surveyor General assigns as a reason for his failure to give an estimate of expenses, that the Commissioner has not "accepted" the selection. Rec., p. 13, fol. 36.

As the plats to be delivered to the grantees by the Surveyor General were to be by the terms of the statute "properly approved," that is, undoubtedly at least by the Commissioner of the General Land Office, if not also by the Secretary of the Interior, there was a discretion vested in the approving officer which has not yet been exercised.

V.

Nor will the title pass from the United States until the company shall accept the plat which the Department shall approve. For upon the passing of the title the company is to surrender all further claims under the original grant, and the company may be entitled to reject what the Department may be willing to approve. The act is a proposition on the part of Congress for a compromise, and until the minds of the parties finally meet there is no contract between them.

VI.

The lands are not subject to taxation under the laws of the territory.

The act of Congress organizing the territory (February 28, 1861, 12 St., 172-174) provides, in section 6, that "no law shall be passed interfering with the primary disposal of the suit," and "no tax shall be imposed on the property of the United States."

This law is construed in the tax law of Colorado, A. D., 1870, which after providing, in section 3, that "all property, both real and personal, within the territory, not expressly exempt by law, shall be subject to taxation," provides, in section 4, that "real estate for the purposes of taxation shall include all land within the territory to which *title has been acquired* from the United States, &c."

VII.

The case cited in the opinion of the court below (Record, p. 26, fol. 81), as ruling this case (People *vs.* Crockett, 33 Cal., 150), proceeded upon a ground which does not exist here. The statute of California rendered *claims* to land taxable, and the court in that case held that an interest which might be sold or taken in execution, was liable to taxation. In this case, the statute provision is different, and the thing taxed and liable to be sold for the tax is *the land* specifically, and not the plaintiff's interest in the land.

CONCLUSION.

We submit that the judgment of the Supreme Court of Colorado should be reversed, and the cause remanded with directions to affirm the judgment of the district court.

JNO. D. McPHERSON,
Attorney for ~~Defendant~~ in Error.

APPENDIX.

[The following is in full the argument of the counsel for the company before the Supreme Court of Colorado, with change of a few words only to adapt it to the changed position of the parties here.]

ARGUMENT OF MESSRS. THATCHER AND GAST.

The principal question presented by the record for the consideration of the court is whether the specific lands described in the agreed statement upon which taxes with the interest thereon aggregating $2,628.86, were paid July 1, 1874, were, under the laws of Colorado, subject to taxation on the first day of May, A. D. 1873. This proposition we insist must be resolved in the negative. Sec. 3, page 88 of the Session Laws of Colorado of 1873, declares: "All property, both real and personal, within the Territory, not expressly exempt by law, shall be subject to taxation." What shall be considered real property for the purpose of taxation is definitely settled by the succeeding section (4), which provides that "real estate for the purpose of taxation shall include all lands within the Territory to which *title has been acquired from the Government of the United States*, and the buildings, fixtures and other improvements thereon." Section six of the organic act of Colorado declares that "no tax shall be imposed upon the property of the United States." Guided by the organic law and the statutes of the Territory, it seems to us that if on or prior to the first day of May, 1873, the appellant had not acquired title from the Government of the United States to the land upon which the appellant has paid taxes for said year, it necessarily follows that it was not at that time subject to taxation. Had the appellant acquired *title*

from the Government at that time? If so, at what particular juncture did the Government part with the title to the land? When did it cease to be "the property of the United States?" These are pertinent inquiries, and must be answered by the court before a judgment can be rendered in the case. In order to a proper understanding of the true status of the conditionally confirmed eleven leagues of the Nolan Grant, and for the purpose of convenient reference in course of our argument, we will here insert the act of July 1, 1870, except section 5, which is not germane to this investigation.

[Here follows the act already printed at pp. 2 and 3.]

The theory of the appellee based upon the proposition that the grant to Gervacio Nolan in December, 1843, created an estate and vested a taxable interest in the grantee and his assigns which was unaffected by the change of government is, as we conceive, wholly untenable. It is unsupported by the decisions of the United States Supreme Court, and cannot rest for its foundation upon the laws of Mexico in force at the time the grant was executed, nor upon the treaty of Guadaloupe Hidalgo. That the status of the grant was not altered merely by change of government must be conceded, but that the grantee had a *vested taxable interest* in the land described in the grant at the time the same was made, is a proposition we deny. The act of the Mexican congress of 1824, and the regulations of 1828 for the disposition of public lands, were the only laws in force at the date of their passage in the Territories of Mexico up to the time the jurisdiction of the United States was by treaty extended over them. Under the act of 1824 the political chiefs (governors) were not authorized to grant in excess of eleven leagues (48,825 acres) to any one individual. The grant, therefore, to Gervacio Nolan of a tract of land em-

bracing five hundred thousand acres (see record, folio 19,) was clearly without authority. The act of Manuel Armijo, then military and civil governor of Mexico, in attempting to make this immense cession of land to Nolan, was *ultra vires*, and void from the beginning. A grant not made in conformity with the act of 1824 and the regulations of 1828 is without validity.

United States *vs.* Vallejo, 1 Black, S. C. R., 541.
United States *vs.* Vigil, 13 Wallace, 450, 451 and 452.
United States *vs.* Hartnell's Executors, 22 Howard, 286.

In the case last cited the Departmental Assembly of Mexico reformed the governor's grant so as to make it conform to the requirements of the act of 1824.

It will scarcely be contended that the change of jurisdiction had the effect to make a grant valid which under the laws of Mexico was void. There is certainly nothing in the treaty of Guadaloupe Hidalgo that will bear such a construction. The true doctrine is that where *in conformity with* law the incipient steps had been taken by the claimant before the sovereignty of Mexico had been transferred to the United States, and where the claimant, by reason of the transfer, had been prevented from completing his inchoate right—in such case, and in such case alone, has the claimant a vested interest which by treaty, as well as by the law of nations, the United States are bound to respect. But even in this class of cases the title, not having passed from the government of Mexico before the change of sovereignty, remains in the United States until the incipient grant by the sanction of sovereign power is perfected into a complete title. This doctrine is fully recognized in the case of Henard's Heirs *vs.* Massey, 8 Howard, 307, 308.

In this opinion the court says: "It is assumed in argu-

ment, and truly, that by the third article of the treaty by which Louisiana was acquired, and by the laws of nations, the inhabitants of the ceded territory were entitled to be maintained and protected in the free enjoyment of their property. But in what property? To such an interest in it, if land, as they had when the country changed owners; and that interest being of a character requiring royal sanction before the Spanish government would recognize it as divesting *public title*, our Government, as the successor of Spain to the public lands, gave the same construction and effect to concessions and orders of survey, holding that the *title* of the King's domain passed by treaty to the United States, notwithstanding the existence of such concessions." "No standing, therefore, in any ordinary judicial tribunal has ever been allowed to these claims until Congress had confirmed them and vested the legal title in the claimant.' The provisions of the Louisiana treaty with respect to the protection of the rights and property of the inhabitants of the old government are the same as in our treaty with Mexico. Such rights and such property only as they enjoy under the former sovereignty are guaranteed to them under the new government.

West *vs.* Cochran, 17 Howard, 416.

As to whether the title to the assessed lands described in the agreed statement remained in the Government up to and subsequent to May 1, 1873, must be determined by reference to the Federal laws in force at that time. A territorial act declaring that title shall be deemed to have passed for the purpose of taxation is without force. The true principle is this: that whenever the question in any court, State or Federal, is whether a title to land which had once been the property of the United States has passed, that question must be solved by the laws of the United States; but whenever, *according to these laws*, the

title shall have passed, then that property, like all other property in the State, is subject to State legislation.

Wilcox *vs.* Jackson, 13 Peters, 517, 518.

Our next inquiry is, what is the true construction of the act of July 1, 1870, confirming the Nolan grant on express conditions, upon compliance with which alone by the confirmees the Government agrees to part with its title.

Among these conditions, it will be observed, among other things not pertinent to this investigation—

First. The confirmees must respect the claims of all actual settlers falling within the limits of the located claim, upon their several claims being established as pre-emptions or homesteads, according to law.

Second. As indemnity for the land occupied by such settlers, the confirmees are required to select *other public land*, within the bounds of the original grant.

Third. The cost of so much of the survey as inures to the benefit of the confirmees must be paid *before* the confirmation provided for by the act of July 1, 1870, shall become *legally effective.*

Fourth. When a plat of the survey and location is duly prepared by the Surveyor General, and approved by the Secretary of the Interior, who is in all such cases the final *supervisory* arbiter, the confirmees, if they accept it at all, must receive it "*in full satisfaction* of all further claims or demands against the United States." This plat properly approved must be furnished as *evidence of title.*

It is only upon the theory that the land within the bounds of the original grant is the property of the United States—*public land*—that this act of Congress can be supported. Every section of the act treats it as public domain. If it were not public land, pre-emption and homestead settlers could not establish their claims according to law. The privileges of the pre-emption and homestead

acts, by express provisions, are only extended to settlers on *public* land. Again, in section 2, it is declared that the confirmees "shall be entitled to locate a like quantity of *public* lands" *within* the bounds of the original grant. Here the land within the grant is explicitly declared to be public land, and by the terms of the act the appellant is precluded from selecting any public land other than that which lies within the original cession of Gervacio Nolan. Judicial interpretation and Congressional legislation thus agree in treating all land similarly located as being the property of the United States, as we have seen from the cases before cited.

Under our statutes we claim that a tax cannot be levied upon a grant with conditions unperformed annexed without an authoritative location in place. So long as it is a mere float, with the title in the government, that may or may not in the future be officially located and segregated from the surrounding public land, a tax levy under our law cannot attach to it. The authorities upon this point, so far as we have been able to discover, are uniform, except where, as in California, under a peculiar statute, the bare *claim* to land is made taxable.

In the case of Whitney and others *vs.* Gunderson, 21 Wisconsin, 380, 381, this question is fully discussed, the court first holding the opinion that after survey, and before approval and patent, or the issuing of a certificate by the Surveyor General, the grant was subject to taxation, but upon motion for rehearing the court reversed its former ruling and asserted the doctrine for which we contend. This case is strictly analagous to the one at bar, involving as it does the right to tax a confirmed grant before the particular land to which the grant attaches is finally and officially determined. The grant to Pierre Grignon had been twice confirmed; June 30, 1869, the plat thereof (pages 362, 363, same case), which was afterwards in 1870 incorporated into a patent, was certified by

Jos. S. Wilson, then Commissioner and *ex officio* Surveyor General of Wisconsin, to be "strictly conformable to the field notes of the survey thereof, which have been examined and approved." The sole question for the determination of the court upon the motion for rehearing was the taxability of the grant prior to the issuing of a certificate, approved plat, or other evidence of the official segregation. The court says: "The act of Congress undoubtedly contemplated that a survey of the land confirmed to Grignon should be made under the direction of the Commissioner of the General Land Office. This was obviously for the purpose of fixing the locality of the tract confirmed to him and his assigns, and until the *approved* survey was made *and a patent* therefor issued it was impossible to determine the boundaries of the tract of land to which the title would attach under the grant. In the case before us the grant was to be located by a survey made under the direction of the Commissioner of the General Land Office; and until this *approved survey, and a certificate as evidence of that fact, or a patent* issued, *the title to no specific tract of land passed under the act.* This, we think, is the manifest intent of this act; and we were therefore mistaken in holding that it vested in Pierre Grignon and his assigns the equitable title and ownership of *any specific tract* of land before such tract had been ascertained and designated by the necessary survey. The official survey was not made *and approved*, nor the register's *certificate* or the *patent* issued thereon until 1870, and before this we think the land was not liable to taxation."

In the case of Ballance *vs.* Forsyth, 13 Howard, 24, where the Surveyor General neglected to make an official survey and ascertain the position and extent of lot No. 65, the title to which by act of Congress of 1823 was recognized to be in one Bourbonne, the court held that a tax assessed in 1843, two years prior to the issuing of the patent, was invalid, remarking that "it is not perceived

how the *specific lot* could be taxed when its boundaries were not known." It is upon this ground distinctly that the court rests its opinion, and not upon the ground that the act of Congress admitting Illinois into the Union prohibited the taxation of land in that State until after the issuing of the patent. The preliminary eleven-leagues selection embraced 49,714 43-100 acres. (See folios 27, 28 of record.) Of this tract 6,565 42-100 acres were awarded to pre-emption and homestead claimants under the provisions of the act of July 1, 1870. (See folio 22 of record.) Pursuant to an order of the board of county commissioners, made on the 13th day of September, A. D. 1873, fixing the rate of taxation for A. D. 1873, taxes were levied upon all the land embraced within the preliminary eleven-leagues selection, save and except the 6,565 43-100 acres which had been awarded to pre-emption and homestead settlers. (See folio 38 of record.) Eleven months *after* May 1, A. D. 1873, by the peremptory *requirement* of the Commissioner of the General Land Office, appellant was compelled to withdraw, and did in fact withdraw from the tract of land upon which said taxes had been levied 920 acres. (See folios 28, 29 and 30 of record.) This was certainly a very material modification, at least of the preliminary tract selected by the appellant. The levy was made upon the entire tract (with the exception above named) inclusive of the said 920 acres. If the appellant on the first day of May, A. D. 1873, had *title* to one acre of the assessed tract, it had title to the entire tract. If the tax levy attached to one acre of the assessed selection, it attached to every acre of it; for the same progress had been made in the adjustment of the appellant's claim with respect to each and every part and parcel of it. The tax levy was valid as to the entire tract, or void as to the entire tract at the time the levy was made, depending upon the taxability or non-taxability of the whole tract levied upon for the year 1873. A proper *test* recognized by the United States Su-

preme Court to determine the taxability of the assessed premises for the year 1873 is, Could they have been sold for taxes? "If such a sale could be made, it must be valid if the land was subject to taxation, and the title would pass to the purchaser; if no such title could pass, then it is because the land is not liable to the tax, and the treasurer of the county has no right to assess it for that purpose." It will be observed that the appellant was not required to withdraw from the preliminary eleven-leagues selection any specific 920 acres. The company was required to reduce the selection to an area within eleven leagues, without reference to the particular 920 acres to be withdrawn. If the theory of the appellee is sound, the 920 acres withdrawn were at the time of the withdrawal subject to a tax lien, and could have been sold for taxes, as well as the residue of the eleven-leagues tract. What is now clearly and indisputably the property of the United States is thus charged with a tax lien, and is subject to sale for taxes. This is the necessary conclusion from the appellee's premises. Can it be possible that a Territory is permitted by a sale of land for taxes to defeat or embarrass the Government's title? The appellant had the same right May 1, A. D. 1873, to the 920 acres that it possessed to the remainder of the selection. The fact that the treasurer of Pueblo county, on the 1st of July, 1874, the day on which the appellant paid the taxes in controversy, knowing of the withdrawal of the 920 acres, only demanded and received the taxes claimed to be due on the residue of the premises, does not alter the principle nor change the legal status of the land embraced in the withdrawal. The conclusion then, in the light of reason and the authorities we have cited, is, we think, irresistible that as the *specific land* to which the confirmed grant attached or would ultimately attach, when the selections of the appellant should be finally approved and patented, was not ascertained before the date of the levy, the levy itself was

no lien on the premises, and the premises could not be sold for taxes, and, therefore, accepting the Supreme Court test, they were not liable to taxation.

Again, the act of Congress of July 1, A. D. 1870, conditionally confirming the grant to the extent of eleven leagues, declares "*before* the confirmation provided for by this act shall become legally effective, *the heirs of the said Gervacio Nolan, or their legal representatives, shall pay the cost of so much of the surveys as inures to their benefit respectively.*" The act is without legal force or effect until the approved plats are prepared; for it is evident under the act that until the *approved* plats, showing the confirmed eleven leagues are prepared, *what particular portion* of the surveys of the original grant will inure to the benefit of the appellant cannot be determined; and until this is determined, the costs of the appellant's survey cannot be computed. On the 31st of March, 1874, eleven months *after* the assessed land must have been taxable, if the judgment of the Supreme Court of Colorado is to be affirmed, the appellant, desirous of procuring properly approved plats as evidence of title under the act, and desiring to pay the costs of so much of the surveys as might inure to the company's benefit, applied to the Surveyor General for an estimate of the cost of *such* survey. The properly approved plats were, however, not ready. "The Surveyor General informed the plaintiff (appellant) that until all selections, including both the preliminary eleven square league selection and the indemnity selections located in lieu of the aggregate area of land awarded as aforesaid to homestead and pre-emption settlers, were *formally accepted* by the Commissioner of the General Land Office, he, the said Surveyor General could make no estimate of the cost of such survey; that the Government price for surveying lands lying on a river, where a meandering line had to be run, was higher than for the survey of complete legal subdivisions; that until the

acceptance and approval of the final selections made *and to be made* by the confirmees of the grant, he could not determine the cost of the survey."

Record, p. 35 and 36.

The Commissioner of the General Land Office and the Secretary of the Interior, exercising supervision and control (act July 5, 1836, Stats., vol. 5, p. 107,) over the official acts of the Surveyor General in all matters "appertaining to the survey and sale of the public lands, and relating to *private claims* of land," might approve or set aside the Surveyor General's plat showing the confirmed eleven leagues. Certain it is that the Surveyor General could not (as he himself expresses it), "until the acceptance (and approval of the final selections made *and to be made*" by the confirmees, *determine and ascertain* the cost of so much of the surveys as would inure to appellant's benefit, and that until such cost was *known and ascertained*, payment thereof could not be tendered or made. The very language employed by the Surveyor General clearly indicates that the selection in its present form would not be accepted. Otherwise, why would he refer to selections *to be made?* Until the costs of such survey were paid—which payment could only be made after the Surveyor General's plats of the confirmed eleven leagues were *properly approved* by the tribunal having supervisory jurisdiction and control over his acts—the confirmatory statute is declared not to be legally effective; in other words, until the *specific* land to which the grant attaches is officially and authoritatively determined, and the cost of the survey thereof is ascertained and paid, the Government does not part with its title. The act itself secures the payment of these costs to the Government before it becomes legally effective. Without this provision the proper approved plats might be incorporated into a patent, and the title thus pass from the Government, and the Govern-

ment be left without any means of enforcing the payment of the money which had been drawn from the Treasury to pay the cost of the survey. The soundness of the principle for which we contend is fully recognized in the case of Railway Company *vs.* Prescott, 16 Wallace, 608.

In determining what acts must be done by the railway company before it will be entitled to a patent for its lands, the court says: "The first is the payment of the costs of surveying. It is admitted that this has never been done in the present case. If the company have such an interest in these lands that they can be sold by the State under her power of taxation, then the *title is divested out of the Government without its consent*, and the right to recover the money expended in the surveys is defeated. As the Government retains the *legal title* until the company, or some one interested in the same grant or title, shall pay these expenses, the State cannot levy and make a title which might in any event defeat this right of the Federal Government reserved in the act by which the inchoate grant was made." This is clearly the recognized doctrine of the United States Supreme Court to-day. The same principle is reasserted in the case of the Union Pacific Railroad Company *vs.* Edward McShane, Treasurer, et al., decided by the United States Supreme Court. In this case the specific tract of land to which the railroad company was entitled was determined by the construction of the road, but the Secretary of the Interior *had refused to issue patents*, withholding the title as security for the performance of what was required under the act, it having been reported to him by the Commission that the road had not been properly constructed. The court says, Justice Miller delivering its opinion: "That the payment of these costs of surveying the land is a condition precedent to the right to receive the title from the Goverament, admits of no doubt. Until this is done, the equity title to the company is incomplete. There remains a payment to be made to

perfect it. There is something to be done, without which the company is not entitled to a patent. The United States retains the legal title by withholding the *patent*, for the purpose of securing the payment of these expenses, and it cannot be permitted to the States to embarrass this right by a sale of the lands for taxes. It is by retaining the title that the payment of costs of survey is to be enforced. And so far as the right of the State to tax the land is concerned, we are of opinion that when the original grant has been perfected by the *issue of the patent*, the right of the State to tax the lands has become perfect. We are satisfied that the United States, until she conveys these lands by *patent*, or otherwise, has an interest whether it be *legal* or *equitable*, which the State of Nebraska is not at liberty to divest by the exercise of the right of taxation."

We go still further, and insist that the title does not pass from the Government even when the specific grant of eleven leagues is officially segregated from the public domain, the plats thereof duly prepared by the Surveyor General, and "properly approved" by the Commissioner of the General Land Office, and the costs of the survey have been paid. There is still one more act to be done before the bill passes, viz., the *acceptance* by the appellant of the properly approved plats or patents in full satisfaction of all further claims and demands against the United States. If taken at all, they must be taken in full satisfaction; but when these properly approved plats are prepared and tendered, the appellant may elect to accept or reject them. If the plats of the selections, as they shall be finally modified, if indeed they are not wholly changed, and an entire new selection made, are not acceptable to the appellant, it can decline the plats and prosecute its claim, if any it has, to the entire grant in the courts. In such case, clearly the title would not pass. The language of the proviso in section 4 of the confirmatory statute, we think, admits of no other reasonable construction. The

confirmees are not bound to accept the provisions of the act; but if they once *accept* the properly approved plats furnished to them by the Surveyor General, the title to the specific tracts embraced in such plats at once passes from the Government to the confirmees. The act is in the nature of a compromise proposition. Congress proposes to secure to the confirmees eleven leagues of land, if in turn the confirmees would relinquish their right to about one hundred and ten leagues. The compromise is binding upon the confirmees the moment they accept the properly approved plats furnished by the Surveyor General *in full satisfaction* of all claims against the Government, and not before.

The payment of the costs of the survey by the confirmees, and the acceptance of the properly approved plats in satisfaction of their whole grant, are fundamental conditions, going to the very foundation of the appellant's right under the act—conditions without the performance of which the Government will not part with its title. Since the confirmees furnished the Surveyor General with the *plat* of the preliminary eleven league selection, "*subject to the revision* of the Commissioner of the General Land Office and the Secretary of the Interior" (see folio 20 of the Record), these supervisory officials have never formally approved the plat. Indeed, the time has not yet arrived in the progress that has been made in the adjustment of the claim when they could properly be called upon to revise and approve the plats to be prepared by the Surveyor General. The selections, as they now stand, have not, so far as the agreed case shows, even had the sanction of the Surveyor General, as he declared as late as March 31, 1874, that "until the acceptance and approval of the final selections *made and to be made*" (see folio 36 of Record), he could not determine the specific tract to which the grant would attach, and therefore was unable to compute the cost of the survey. The super-

visory authorities may annul and set aside the selections already made, and order a different location. It is clearly in their power to do so, and frequently since the passage of the act of 1836, above cited, this power has been exercised. Independent of this statute, the Government may modify our selections; it is not bound, except so far as it is restrained by the confirmatory staute, to consult the appellant's wishes in the location of the tract. In the case of Fremont *vs.* the United States, (17 Howard, 566,) the court says: "Under the Mexican government, the survey was to be made or approved by the officer of the government, and the party was not at liberty to give what form he pleased to the grant. This precaution was necessary, in order to prevent the party from giving it such a form as would be inconvenient to the adjoining public domain, and impair its value. The right which the Mexican government reserved to control this survey passed, with all other public rights, to the United States; and the survey must now be made under the authority of the United States."

The rulings of the Department of the Interior, although not entitled to the same consideration as judicial opinions, are not without weight. The Secretary of the Interior, January 23, 1875, in construing the act of Congress of June 21, 1860, entitled "an act to confirm private land claims in the Territory of New Mexico," and the act amendatory thereto of February 25, 1869, in which *identically the same language* is used with reference to the payment of the cost of the survey and the furnishing of properly approved plats, (Stats., vol. 45, p. 440,) as is employed in the confirmatory act of July 1, 1870.

William Craig, quasi appellant, *vs.* Litensdorfer, vol. 1, Western Land Owner, p. 165, held that the Land Department exercises under the law supervisory power and control in all cases of confirmed land claims; that such super-

vision by the very terms of the act of July 4, 1836, (Stats., vol. 5, p. 107,) extended to "all executive duties then prescribed, or which might thereafter be prescribed by law, appertaining to the survey and sale of public lands of the United States, or in anywise respecting such public land, and also such as relate to *private claims* of land and the *issuing of patents* for *all grants* of land under the authority of the Government of the United States." The Hon. Secretary, in alluding to other analagous acts of a prior date, says "Before concluding this opinion I wish to refer particularly to the act of Congress passed June 2, 1858, entitled "An act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes." Section 3 provides: "That in all cases of confirmation by this act, or where any private land claim has been confirmed by Congress, and the same in whole or in part has not been located or satisfied, * * it shall be the duty of the Surveyor General * * to issue to the claimant * * a certificate of location for a quantity of land equal to that so confirmed and unsatisfied." "Under this act the Department assumed to regulate the conduct of the Surveyor General in discharging the duties devolved upon him, and the Land Office has uniformly and continuously, for a period of sixteen years, exercised supervision and control over the acts of the Surveyor General connected with the discharge of his duties under the act of June 2, 1858. The right of such supervision and control has never been questioned."

The California cases upon which the appellee largely relies are clearly distinguishable in principle, as well as to the authority under which the tax was imposed, from the one at bar. Section 5 of the California revenue act, 1861, provides that "the term real estate, whenever used in this act, shall be deemed and taken to mean and include, and it is hereby declared to mean and include, the ownership

of or *claim* to any land within the State, and the *claim* by any person to any land shall be listed under the head of real estate." A bare *claim* to land, in the absence of title, legal or equitable, is made taxable. Under such a statute the rulings of the California courts have been made. The California cases cited, viz., Palmer *vs.* Boling, 8 Cal., 384; People *vs.* Crocket, 33 Cal., 150, are very different from the one under consideration. In the former case, before the assessment was made, the Supreme Court of the United States (Fremont *vs.* United States, 18 Howard, 542), had held that the grant conveyed not merely an inchoate or equitable, but a *legal title*, which vested in the grantee a present, immediate estate in fee and the grant had been officially segregated from the public domain; in the latter case, which is that of a confirmed grant without any conditions precedent annexed thereto, but which had not been officially segregated, the court holds that inasmuch as it is a *claim* to land under the local statutes, it may be taxed. It will be seen that these cases fall very short of furnishing any support to the doctrine for which appellee contends. In the case of Witherspoon *vs.* Duncan, 4 Wallace, 210, the requisite proof had been furnished to the register and receiver of the land office at Little Rock, and a *certificate for the specific tract* entitling the children of Timothy Harrell to a patent, was issued at the time. This case, in principle, is very similar to the case of Carroll *vs.* Safford, 3 Howard, 461, in which the court holds that a pre-emption entry perfected according to law—the purchase money having been paid to the Government and evidenced by a *patent certificate* for the specific tract—is subject to taxation. The court says: "When the land was purchased and paid for it was no longer the property of the United States, but of the purchaser. He held for it a *final certificate*, which could no more be cancelled by the United States than a patent. * * * So far as the rights of the pur-

chasers are concerned, they are protected under the patent certificate as fully as under the patent." These authorities, as we interpret them, instead of bearing out the doctine contended for by the appellee, so far as they are applicable to the case at bar, conclusively sustain the principles upon which in part we base our right to recover.

IN THE

SUPREME COURT

OF THE UNITED STATES.

TO THE OCTOBER TERM A. D. 1876.

THE CENTRAL COLORADO IMPROVEMENT COMPANY,
Appellant,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO,
Appellee.

Appeal from the Supreme Court of the Territory of Colorado.

Argument, and Brief of Authorities for Appellee.

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Argument, and Brief of Authorities for Appellee.

This suit was brought by appellant under Sec. 106, page 123, Acts 1870, of the Legislature of Colorado, to recover back $2,628.86, paid under protest, by appellant on the 1st of July, 1874, as taxes for the year 1873, and for interest thereon. The cause was submitted upon an agreed statement of facts, and decided upon those facts in the court below; the same facts are submitted to this Honorable Court, and are fully set out in the record.

The abstract substantially covers the points agreed upon.

We believe it is the understanding of the parties, that the only question to be argued here, is, whether the lands possessed and claimed by the appellant were subject to taxation for the year 1873.

The appellee respectfully insists that they were, and that the judgment of the Court below should be affirmed.

The question has been settled by the legislature of Colorado, unless the lands were *expressly exempt* from taxation; for the statute provides that "*All property*, both real and personal, within this territory, not *expressly exempt* by law, *shall* be subject to taxation." See Acts 1870, page 88, Sec. 3.

Section 7, of the same act, declares what property shall be exempt. Let us see. These lands are not the property of the territory, nor are they university or school lands: they are not the property of a county, township, incorporated town, or school district devoted to public use, and not held for pecuniary profit; they are not public grounds donated to the public, duly transferred, nor are they places for the burial of the dead; they are not used exclusively for buildings and for the meetings of fire companies; they are not the grounds of library, scientific, benevolent, or religious institutions, nor of societies devoted solely to the appropriate objects of those institutions, nor are they the estate of any county or territorial agricultural society, nor the estate of Indians. This embraces all the real property exempt by law, except property of the United States; and unless the premises claimed by the appellant are the "property of the United States," within the meaning of the statute, they must be subject to taxation, not being *expressly exempt* by law.

The agreed statement of facts show, that in December, 1843, Manuel Armijo, then civil and military governor of Mexico, granted to Gervacio Nolán, a tract of land, beginning at a point one and a half léagues below the St. Charles river, on the Arkansas, at a monument situate on the south

bank of the Arkansas; thence following said south bank upward, to a point five leagues above the junction of said rivers, to a second monument; thence running half-way up the brow of the mountain to a third monument; thence following the same brow of the mountain to a point opposite the first monument, at which point was placed a fourth monument; and from thence to the place of beginning; containing, by estimate, about five hundred thousand acres.

In 1843 said lands were situate in the province of New Mexico, but are now in the county of Pueblo, Colorado.

By an Act of Congress, approved on the 1st day of July, 1870, the grant above mentioned was "confirmed to the extent of eleven square leagues." 16, United States statutes at large, 646.

The first section of said Act of Congress, also recites the fact that said grant was approved by the Surveyor-General of New Mexico, on the 8th of October, 1861; was designated as No. 48, in the transcript of *private land claims* in New Mexico, tansmitted to Congress by the Secretary of the Interior on the 12th of May, 1862.

By the 2d Section of said Act of Congress, the location of said eleven square leagues are required to be made within the boundaries of said original grant; that the exterior lines of said eleven leagues should be adjusted according to the lines of the public surveys as near as practicable, but in a compact form; that homestead and pre-emption claims of actual settlers within the boundaries of said eleven leagues should be adjusted, and for the aggregate area of such claims established under the homestead and pre-emption laws, the heirs of said Nolan, or their legal representatives, should be entitled, as an indemnity, to a like quantity of public lands within said original grant according to the lines of the public surveys, but not to exceed one hundred and sixty acres in any one section.

The 3d Section of said act made it the duty of the Commission of the General Land Office to cause the lines of the

public surveys to be run in the regions where a proper location would place said Nolan grant; and that the expenses of the same should be paid out of any money in the treasury not otherwise appropriated. It further provided that the heirs of said Nolan, or their legal representatives, should pay *so much* of said surveys as should *inure to their benefit respectively*, and that said actual settlers whose claims might be adjusted as valid, should be allowed to enter their improvements, by a compliance with the pre-emption or homestead laws.

By Sec. 4, it was further provided that, upon the adjustment of said claims of the heirs of said Nolan, according to the provisions of the Act, it should be the duty of the Surveyor-General of the district to furnish properly approved plats to said claimants, or their legal representatives, which should be evidence of title; and that the same was to be done according to such instructions as might be given by the Commissioner of the General Land Office: *Provided, however*, that when said lands were so confirmed, surveyed, and patented, they should be held and taken to be a full satisfaction of all further claims or demands against the United States.

"Sec. 5. *And be it further enacted*, That *immediately* upon *running the lines* provided for in the second section of this act, the Surveyor-General of the district *shall notify* the *said heirs of* Gervacia Nolan, or *their legal representatives*, of the fact of *such survey* being made, and *said claimants shall, within three months after notice of such survey, select and locate their said claims* according to the provisions of this act, and shall, within said time, *furnish* the Surveyor-General *with a description of such location*, specifying the lines of the same, and the *party failing to make such selection and location*, in such manner and within such time, shall be deemed and held to have abandoned *their claim*, and their *rights* and *equities* under this act shall *cease* and *terminate*."

It is agreed, that appellant has been the legal representative of the heirs of said Nolan ever since May 1st, 1873.

Also, that prior to the 1st of May, 1873, appellant was seized and possessed of all the right, title and interest in and to said lands, which were, by the making of said grant, vested in Gervacia Nolan, the original grantee.

It is agreed, that after receiving notice of the survey being made, as required by the act of Congress, the appellant did select and locate in a compact form, lands to the extent of eleven square leagues—being 48,825 acres—and on the 27th day of April, 1872, furnished the Surveyor-General with a plat and description of said selection and location, as required by the Act of Congress.

That on the 22d of May, 1872, the Commissioner of the General Land Office caused the Register and Receiver of the Land Office at Pueblo to give the notice to pre-emption and homestead settlers—as required by the Act of Congress—to come forward and prove up their claims: pursuant to that notice, said claimants proved up and entered 6,565 42-100 acres, situate within the exterior lines of said eleven leagues, and which were subsequently approved by the Commissioner of the General Land Office, and by the Secretary of the Interior.

It is also agreed, that on the 30th of January, 1874, appellant selected 6,565 42-100 acres of other lands outside of the eleven league selection, and within the exterior lines of the original grant—in lieu of the land given to said settlers; but no tax has been paid by the appellant on this land.

That when a survey was made of the meanderings of the Arkansas river, after the selection and location of the said eleven square leagues, it was discovered that the appellant had taken 916 acres too much; therefore, on the 9th of March, 1874, at the suggestion of the Commissioner of the General Land Office, appellant withdrew certain tracts of land, described in the record, amounting in the aggregate to 920 acres, which withdrawal was on the same day

approved by said Commissioner, and that no tax has been paid by appellant on this land either.

It is apparent, from the language of the said 5th section, taken in connection with the 1st section, that Congress regarded the claimants under the original grant as having *vested* "*rights*," and "equities" under the grant, and under said act; but which, by *laches*, might be "abandoned." It is clear, we think, that by the terms of the act, the heirs of said Gervacia Nolan, or their legal representatives, had the exclusive right to determine where their eleven square leagues of land should be located, within the original grant; they were vested with the authority to "select and locate their said claims," and the officers of the government had no control over that branch of the subject, further than to adjust the rights of pre-emption and homestead settlers within said eleven square leagues, when selected. This was done, as appears by the record, and the last named claimants were allowed 6,565 42-100ths acres, out of the 49,741 43-100ths acres of the eleven square leagues. When these claims were adjusted, the title to the residue of said eleven league selection, became absolute; the segregation of the remaining 43,176 acres—upon which the taxes in question were paid—from the public domain, was then perfect; and from that time all the acts to be performed by the officers of the government were *ministerial* merely. Palmer vs. Boling, 8th Cal., 384; Higgins vs. Haughton, 25th Cal., 252.

Now, may it please the Court, can it be said that the premises upon which the taxes were assessed by Pueblo county and paid by the appellant, were the property of the United States on the 1st of May, 1873? The appellant has been and still is claiming them as a *private* land grant from the Mexican Government, to Nolan, and the Government of the United States has never disputed the legality of that private grant, to the extent of eleven square leagues. Indeed, the 1st Section of the Act of Congress, *supra*, recites

the fact that as far back as the 8th of October, 1861, the Surveyor-General of New Mexico, who, at that time, it seems, had jurisdiction over the subject, as an officer of the United States, approved this Mexican grant; and on the 12th of May, 1862, the Secretary of the Interior of the United States again recognized it, as a *private land claim*, and designated it as claim No. 48, which he then transmitted to Congress for approval; and when Congress came to act upon the subject, the "*private land claim*" was expressly affirmed and ratified, not to its full extent, but to the extent of eleven square leagues, or *forty-eight thousand eight hundred and twenty-five acres*, which embraces the identical land now claimed by appellant as exempt from taxation for the year 1873.

The fact that no *patent* has ever been issued by the Government, conveying these lands to the grantee, or to appellant, can make no difference, so far as it relates to the question of the liability of the land for taxes.

By Section 104, page 123, Acts of 1870, of the Legislature of Colorado, Lands entered by pre-emption, final homestead, at public or private sale, *or otherwise*, shall be subject to taxation, *whether the patent shall have been issued or not.*

"It is assumed, that at the time the land was assessed for taxation, the fee was in the United States, and that consequently, it was not liable to taxation. This position cannot be admitted. It imposes a limitation on state power, which does not come within the delegated powers of the Federal Government. In the admission of several of the Western states into the Union, a compact was entered into that the lands sold by the United States, within such states, should not be taxed until after the expiration of five years from the time of the sale. But no such compact is applicable to the case before us. The question arises on the point, whether a state has power to tax land, after it has been purchased and paid for by its citizens, *before the emanation of the patent by the General Government.*" * * * *

"The taxing power of a state may reach everything within the state, which can be denominated property. It may be made to embrace all equitable credits of whatever description they may be." * * * "The language of the act is general, and embraces such land. In law, land purchased and paid for, is considered as real estate, and descended to the heirs, and not to the executors and administrators." * * * "From the large amount of land sales, the patents are some years behind the sales; and if the land sold could not be taxed until the title issued, it would postpone a considerable portion of the revenue of the state, while the owner of the land is in possession of it, and exercising his rights over it." Carroll vs. Perry et al., 4; McLean, C. C. R., 25; Weston, et al. vs. City of Charleston, 2; Peters, on page 468; Tonnage Tax Case, 12 Wallace, 204.

The record shows, that the original grant of lands in question was made on the 1st of December, 1843. By the treaty between the Government of the United States and Mexico, concluded on the 2d day of February, 1848, it was stipulated that "property of every kind" then belonging to Mexicans, should be "*inviolably respected*" by the United States, and the owners thereof should "enjoy with respect to it, guarantees equally ample as if the same belonged to citizens of the United States." See the treaty of Gaudalupe Hidalgo, Article viii, 9th U. S. Statutes at large, page 929.

The provisions of this treaty protected and guaranteed to Nolan, all the rights to this land which he then had. Henshaw vs. Bissell, 18th Wallace, 264. And the Government of the United States was bound in good faith to uphold and protect them. Fremont vs. the United States, 17th Howard, 557.

As between the original grantee and the Government, the grantee had a *vested interest* in the land mentioned in the grant. Fremont vs. the United States, 17 Howard, 558, 559, and 560.

The estate, which vested in the grantee upon the execution of the grant, remained unaffected by the change of government; but the survey and measurement were to be made, not in accordance with the laws of the old government, which were abrogated with its authority; but in accordance with the policy and laws of the new government; but since only eleven square leagues was confirmed by Congress, the precise location of that part of the original grant was to be ascertained, and segregated from the public domain, by an official survey. When such survey was made, of the lands confirmed to the grantee, it "gave precision to that title, and attached it to the land surveyed." Rutherford vs. Green's Heirs, 2 Wheaton, 196.

Under the treaty, it became the duty of this Government to make its surveys of the public lands in such a manner as to segregate and set apart the lands passed by the Mexican grant. This duty was performed and discharged by the recognition of the rights of the heirs of Nolan, the grantee; by the Act of July 1st, 1870; and the survey following the confirmation. From *that time* precision was given to the title, and it became perfect. A patent was not necessary to invest Nolan, his heirs, or grantees, with the title, as their title existed at the time of the cession of the territory to this Government; and the only act necessary to render it perfect to a *definite and particular* tract, was an official segregation. The action of the officers of the Government, culminating in the Act of Congress of July 1st, 1870, were direct recognitions of the validity of the private claim under the Mexican grant; and the survey attached the title to the *specific land.*

In the case of Stoddard vs. Chambers, 2 Howard, 316, this Court said that, "A confirmation by Act of Congress, vests in the confirmee the right of the United States, and a patent, if issued, could only be evidence of this."

A patent in such case would be in the nature of a quit-claim, and only be evidence of the pre-existing title, made perfect by the segregation of this land from the public do-

main. The essential and substantive acts on the part of the Government, under the law of 1870, were the confirmation and survey, and a patent could make the *title* no better ;— it would only serve as evidence of a partition or segregation of the premises from the lands of the Government. The issuance of a patent could only involve duties of a *ministerial* character, as was held in Landes vs. Brant, 10 Howard, 370. But we insist, if the Court please, that the *title* to the eleven leagues in question relates back to the 1st of December, 1843, the date of the original grant to Nolan. United States vs. Arredondo, et al, 6 Peters, * p 735 ; United States vs. Percheman, 7 Peters, * p 87 ; Garcia vs. Lee, 12 Peters, * p 519.

The Government of the United States never claimed this property; it never was "the property of the United States;" on the contrary, it has always been recognized as a private land claim. Waterman et al. vs. Smith, 13 Cal., 383, 411 ; Rutherford vs. Green's Heirs, 2d Wheaton, 196; Fremont vs. United States, 17 Howard, 542 ; The United States vs. Mareno, 1st Wallace, 400 ; Gregnon's Lessee vs. Astor et al, 2 Howard, p. 344 ; United States vs. Reading, 18 Howard, 1 ; Mahoney vs. Van Winkle, 33 Cal., 456; Witherspoon vs. Duncan, 4 Wallace, p. 220.

Nor can it be material, we think, to inquire whether proper plats have been filed of the lands in question, or whether any of the expenses of the survey should be paid by the appellant, for the record shows that appellant has at all times been desirous and willing to perform all that was required to be done on its part, and has been prevented from doing so by the acts of the officers of the United States. If these things were conditions, which might affect the title— which we deny—they were *conditions subsequent*, running to the Government of the United States ; and none but the government could take advantage of them. Surely the omission or inability of the officers of the government to perform their duties, cannot, upon any sound principle of

law or equity, forfeit the property of the individual to the government. Such omission or inability could not divest the appellant of the right of property it had already acquired through the original grant, the Act of Congress, and segregation of the premises. Fremont vs. the United States, 17 Howard, p. 563; United States vs. Reading, 18 Howard, p. 7.

It does not appear, nor does it necessarily follow from the facts, that appellant is liable for any costs of the survey; the lines of the government survey were, by the terms of the Act of Congress, to be run so as to leave the eleven leagues in a compact form; and "that the exterior lines of said claim of eleven leagues, as confirmed by this act shall be adjusted according to the lines of the *public surveys* as near as practicable," and the public surveys were to be paid out of government funds.

We respectfully submit, that it was not competent for Congress to incumber these lands with the costs of surveying them.

The United States took the territory which embraced this grant of land, with the grant already made and established; and if the boundaries were subsequently changed, by Congress allowing pre-emptions or homestead claims to be carved out of the grant, or for any other cause, the government should bear the expense of segregation.

By the terms of the treaty with Mexico, this grant must be "*inviolably respected.*" To create a charge upon this grant of land, or to incumber it in any manner, by Act of Congress, would be, we think, a violation of the treaty, and, therefore, void. United States vs. Percherman, 7 Peters, * p. 87.

Returning now to the question of taxation: it is claimed by appellant that the title to this land was in the United States, and therefore the lands were not subject to taxation. But it is shown by the record that the survey of the eleven square leagues was made by the Surveyor-General prior to the first day of May, 1873, and that the selection had been

made, and a description of the premises selected had been furnished to the Surveyor-General, and the premises designated upon the township map. In the case of Witherspoon vs. Duncan, 4th Wallace, 210, a portion of the public domain, in what was then the territory of Arkansas, was, on the 23d day of May, 1828, by treaty, ceded to the Cherokee Indians, west of the Mississippi river, and suitable provision was made for the removal of the settlers from it. As an "indemnity" for the loss of improvements, and the trouble and expense of removing, each settler who did remove, was entitled, by Act of Congress, to enter at the proper land office in Arkansas, two quarter-sections of the public lands of the territory. The children of one Harrell (one of the settlers on these ceded lands), furnished the requisite proof to the Register and Receiver of the Land Office at Little Rock, of the settlement, removal, and subsequent death of their father, and were, on the 22d of May, 1830, allowed to enter two-quarter sections of land. The proper certificate of donation was made out, and transmitted to the General Land Office at Washington, but no *patent* was ever issued for the land embraced in the certificate until the 5th of February, 1846. In 1842 these lands were listed for taxation by the authorities of Arkansas, and afterwards were sold for non-payment of those taxes. Before the taxes were levied, the State of Arkansas, on being admitted into the Union, made a compact with the General Government, not to tax the public lands within the State, nor interfere with the primary disposal by the United States, or with the regulations adopted by Congress for securing the title in them to purchasers. A bill was filed to set aside and annul the tax sale, and to quiet the title of the heirs of Harrell, on the ground that inasmuch as the lands were not *purchased* of the government, and *paid* for, and no patent had been issued for the lands when the taxes were assessed, the lands were not subject to taxation; and that the sale was illegal, as being in contravention of said compact with the Government.

The bill was dismissed, and on appeal, the Supreme Court of Arkansas affirmed the decision of the court below, and on appeal to the Supreme Court of the United States, the decision was again affirmed. The Court held that the State had the right to determine the manner of levying and collecting taxes; that it could declare that the particular tract of land should be chargeable with the taxes, no matter who the owner was, or in whose name it was assessed, etc. That the lands were subject to taxation, and that the State had the authority to impose the taxes on them before the donation entry was actually confirmed, or a patent had been issued. The Court holding—as in the case in 4th McLean, *supra*—that if the right to tax was in abeyance until a confirmation of the entry, or a patent should issue, it would work a great hardship to the State; for the person who made the entry, as soon as he got his certificate of entry, was protected in his proprietary interest, could take possession and make valuable and lasting improvements, which it would be difficult to separate from the freehold for the purpose of taxation. That the power to tax existed as soon as the ownership was changed; and this was effected when the entry was made, etc. If this were not so, those who get a title *without* money, would enjoy higher privileges, and be placed on a better footing, than the great body of persons who purchase lands *with* money. The Court also held that when the patent issued, it related back to the original entry. See also, to the same effect, the case of Carroll vs. Safford, 3d Howard, 450.

So, in a case to enjoin the sale of ten leagues of land known as the Fremont grant, for non-payment of taxes, assessed under a statute which declared that all property within the State, of whatever description, owned by an individual or private corporation, should be subject to taxation, two points were made: First, That the survey of the land was made, segregating it from the public lands, after the assessment of the taxes; And, Second, That the land was

The laws of Mexico authorized the military and civil governors of the province of New Mexico, to make grants of eleven leagues to any one person. See United States vs. Vallejo, 1st Black, 641.

Appellant claims that the act of the military and civil governor, in granting to Nolan more than eleven leagues, was *ultra vires*, and "void from the beginning." The authorities cited do not support the proposition; on the contrary, the case of the United States vs. Hartnell's Executors, 22d Howard, 286, is to the contrary. The grant was good for eleven leagues. The appellant is in no condition to question the validity of the original grant, to the extent of eleven leagues; it claims title under the grantee or his heirs; it is in possession under the grantee or his heirs; it claims, by the record, to own and possess all the right, title, and interest of the grantee (if any he had) in and to the eleven leagues; it is in possession, exercising ownership over the premises; has paid the taxes as owner; the Act of Congress recognized the heirs of Nolan as the owners. Appellant is, therefore, estopped, by the record, from saying that the grant was "void from the beginning."

The case of the United States vs. Vallejo, 1st Black, 541, cited by appellant, is not in point. The case turned upon two questions: 1st, Whether the claim set up under the grant was *bone fide;* and 2d, Whether the civil and military governor had authority to *sell* the public land. The majority of the court held the claim to be *fraudulent;* and also that the pretended *purchase* of the land was *void.* As the governors of the provinces of Mexico were only vested with authority to make grants of land, by way of donation, to aid in colonization and settlement of the country, under the laws of Mexico of 1824, and the land regulations of 1828; Justices Grier and Wayne dissenting, the latter following and reciting the opinion of Judge McAllister. That too, was a case asking *for confirmation.* In the case at the bar the grant has already been confirmed.

The case of the United States vs. Vigil, 13 Wallace, 449, is not an authority in this case.

That case was brought under a special Act of Congress, relating to the settlement of Mexican grants lying in California; and was for the confirmation of a grant of 2,000,000 acres, which Vigil claimed as having been granted to him by the *territorial Departmental Assembly*. The Court held that the power to dispose of the public lands was governed by the act of the Mexican Congress of 1824, and the regulations of 1828—as in 1st Black, *supra*,—conferring that power upon the *Governor*, and that the *Departmental Assembly* had no power to make the grant; that the *initiative* must be taken with the *Governor*, which was not done: therefore, the act of the Departmental Assembly was an usurpation of the prerogative of the supreme Mexican government, and consequently void.

Nor, if the Court please, are we able to see that the case of Menard's heirs vs. Massey's, 8 Howard, 293, is authority in the case at the bar.

That was a controversy between one holding the land under a patent from the United States, who had purchased it *before* the act of July, 1836 was passed, in relation to grants, and one who claimed under a Spanish grant, which had not been surveyed or located before the sale was made; the Court held in favor of the claimant under the patent. In referring to the rights of the claimant under the grant, the Court say, at p. 314, "That the claimant and the United States were *parties to* the *selection* of the land; for, as *they agreed to the survey, they were mutually bound*, and *respectively estopped by it*." We respectfully submit this is bad authority for appellant.

The case of Wilcox vs. Jackson, 13 Peters, 498-510, was an action of *ejectment*, the plaintiff resting his right to recover upon a *register's certificate, without a patent;* the defendant was an officer of the United States, in possession of the premises as military commandant of the post. And the

court held that the plaintiff could not recover upon a register's certificate in an action of ejectment. The Court, after referring to the fact that Wilcox was merely commandant of the post, at page 516, say: "This being the case, the question which we are now examining is really this:—whether a person holding a register's certificate without a patent can recover the land as against the United States," and it was held the plaintiff could not recover.

On page 513 the Court also say: "But we go further, and say, that whenever a tract of land shall have once been legally appropriated to any purpose, from *that moment* the land thus appropriated *becomes severed from the mass of the public lands*, and that no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it, although no reservation were made of it."

The case of West vs. Cochran, 17 Howard, 416, was also an action of ejectment. The plaintiff's claim of title to the land was based upon a Spanish grant, and commissioners appointed under the Act of Congress of 1807 (2d Statute at Large, 440) had decided that the plaintiff *had a title* to an *unlocated tract*, a survey of which was necessary in order to designate the land to which the title should attach.

The Court say: "The claim being *unlocated* and *vague*, power was reserved the United States to locate the tract by survey," by virtue of the 7th section of the same act. And as there had been no survey of the tract in controversy, before the defendant acquired title, the plaintiff could not recover. We do not see that this is authority for appellant.

The case of Whitney et al. vs. Gunderson, 31st Wis., cited by appellant, was also an action of ejectment. The case did not turn upon the question whether the land was subject to taxation or not; that question was merely incidental; and when the case was first decided the Court held the land liable to taxation; but that it was the duty of the party in possession to pay the taxes; therefore, his tax titles were not evidence

for him in the action of ejectment, etc.; the case was decided in favor of the plaintiff upon other grounds. On motion for re-hearing, the Court, without citing authority on the tax question, reversed its opinion on that point alone, but overruled the motion, and held the same way as at first upon the other questions. It is apparent from the case as reported that the Court did not place its decision of the case upon the question of the right to tax the land. Beside, it does not appear that the land had been surveyed as required by the grant. Again, it will be observed, that the lands in controversy in that case were embraced within the Fort Howard military reservation (see page 375); for that reason also, the land was not subject to taxation. So appellant being in possession, claiming the land, was bound to pay the taxes. The case is against appellant upon this point.

We think, may it please the Court, there is still another and stronger reason against the authority of Ballance vs. Forsyth, 13 Howard, being in point in this case, than the one given in the case of Palmer vs. Boling, 8th Cal., 384. It will be observed that it was an action of ejectment, based upon a tax deed—always a precarious title—to recover lot 65 (and perhaps another) in the town of Peoria, Illinois. The lot, or lots, were held under title derived from the United States, under an act of Congress of March 3d, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria." The lots had been duly confirmed under that act, and another, dated May 15th, 1829; and it was shown on the trial that they were situated *within the north-east fractional quarter of fractional section nine*, etc. The acts above referred to made it the duty of the surveyor of public lands to survey these lots, and plat them; and whereupon patents should issue. That duty, however, was neglected by the surveyor for many years. These lots were small; not over four acres could be confirmed under the act of Congress. After the confirmation, and before the survey was made, the plaintiff in ejectment, or those under

whom he claimed, had obtained a patent to the *same fractional quarter section* in which these lots were situated.—The patent contained an *exception* of the rights of all persons claiming under the act of Congress of March 3d, 1823; therefore the claim to these lots was not effected by the patent.

The county commissioners of Peoria county levied a tax upon the real property in the county, for 1843. These lots were surveyed before the tax was assessed, *but the assessment was made on the said fractional quarter section*, without regard to the lots reserved; the *lots* were neither *assessed nor sold for the taxes due on them*, but were sold for the taxes *due on the entire fractional quarter section in which they were situated.* The Court held that although the title to Bogardus for the fractional quarter section was prior to the patent for the lots, the reservation in his patent, and also in his entry, was sufficient notice that the title to those lots did not pass. The Court also held that the lots were not "liable for the *taxes due on the quarter section*," and therefore the sale was void.

We are not able to see how the Railway Company vs. Prescott, 16 Wallace, cited by appellant, can be regarded as an authority in the case at the bar.

In that case the premises in controversy *originally belonged to the government of the United States.* The act of Congress, under which the railway company claimed title, never professed to grant it to the company, except upon the performence of certain *conditions precedent*, and also upon another *condition*, that in the event the lands were not sold by the company within three years after final completion of the road, the lands should be sold *by the government* to *actual settlers*, under the *pre-emption laws*, at the government price per acre, and the money, after deducting the expense of survey, be paid to the company in lieu of the land. Therefore, it was held, that under the peculiar grant in that case, it was not competent to defeat the intention of Con-

gress, by allowing the lands to be sold for State taxes, when the conditions precedent had *not been complied with*, nor the lands sold by the railway company. The title was reserved in the government for specific purposes, therefore, until those conditions were performed the company could not acquire a title to the lands, and if those conditions were not performed, the government had the right to see that the land should be improved; it therefore retained the title with a view to placing the lands where they would be more sure of settlement under the pre-emption laws.

The case of the Union Pacific Railroad Company vs. McShane, 22 Wallace, 444, is express authority for saying that lands are subject to taxation after the government has ceased to hold the title, notwithstanding the Act of Congress provided that the grantee should pay the expense of the survey, which was not done.

There is a manifest difference between cases where the United States once become the absolute owner of the premises in question, and cases like the present one, of grant, made by another government prior to the acquisition of the territory by the United States. This distinction is directly recognized in the case of Morehouse vs. Phelps, 21 Howard, at pp. 304, 305.

But in the case at the bar the government of the United States never held a title to the eleven leagues in cotroversy. The act of 1870 is the highest authority for saying the eleven leagues were a private claim, which, when selected, and located, and the survey made, divested the government of even a shadow of interest in the lands, further than to collect a mere pittance for surveying, after the officers of the government should ascertain that amount; and that too is a matter resting purely between the appellant and the government. Suppose those expenses were never exacted by the government officers whose duty it may be to make the collection, and should never be paid voluntarily by appellant, shall the lands always remain exempt from taxation?

It is not claimed that the taxes were excessive, or that appellant was required to pay any greater rate than others, upon the same valuation.

"*All property*, both real and personal, within the territory, *not expressly exempt by law*, shall be subject to taxation."

Wherefore, appellee respectfully submits that the judgment of the Court below should be affirmed.

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